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No. 94-

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1994

ALICE ALLEN and LAURA FEINNER
Petitioners,
VS.
CITY OF DUARTE and DUARTE REDEVELOPMENT AGENCY,
political subdivisions of the
State of California
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

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QUESTION PRESENTED

Whether the California Court of Appeal violated Petitioners' rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment when it ruled that Petitioners lacked standing to challenge the redevelopment plan of the city in which Petitioners resided and paid a tax, because Petitioners did not pay a tax on real property in the city.

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Petitioners, ALICE ALLEN and LAURA FEINNER, respectfully request that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California for the Second Appellate District, Division Four, filed April 14, 1994.

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California for the Second Appellate District, Division Four, filed April 14, 1994, is printed in Appendix A; the opinion is not published or reported. The order of the Court of Appeal denying Petitioners' Petition for Rehearing, filed May 16, 1994, is printed in Appendix B. The order of the Supreme Court of the State of California denying Petitioners' Petition for Review, filed July 13, 1994, is printed in Appendix C. The Statement of Decision of the Superior Court of the State of California for the County of Los Angeles, filed April 27, 1992, is printed in Appendix D. The Judgment of the Superior Court, filed April 27, 1992, is printed in Appendix E.

JURISDICTION

The judgment of the California Court of Appeal was entered on April 14, 1994 (App. A). A timely petition for rehearing was denied on May 16, 1994 (App. B). A timely petition for review by the California Supreme Court was denied on July 13, 1994 (App. C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in part:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution provides in part:

". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES INVOLVED

Section 860 of the California Code of Civil Procedure (West 1980) provides:

"A public agency may upon the existence of any matter which under any other law is authorized to be determined pursuant to this chapter, and for 60 days thereafter, bring an action in the superior court of the county in which the principal office of the public agency is located to determine the validity of such matter. The action shall be in the nature of a proceeding in rem."

Section 863 of the California Code of Civil Procedure (West 1980) provides in part:

"If no proceedings have been brought by the public agency pursuant to this chapter, any interested person may bring an action within the time and in the court specified by Section 860 to determine the validity of such matter. . . ."

Section 33501 of the California Health & Safety Code (the California Community Redevelopment Law, Section 3) provided in 1990 in part (West 1973):

"An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the redevelopment plan to be financed or refinanced, in whole or in part, by the bonds, or to determine the validity of a redevelopment plan not financed by bonds, including . . . the legality and validity of all proceedings theretofore taken for or in any way connected with the establishment of the agency, its authority to transact business and exercise its powers, the designation of the survey area, the selection of the project area, the formulation of the preliminary plan, and the adoption of the redevelopment or renewal plan, ..."

Section 526a of the California Code of Civil Procedure (West 1980) provides:

"An action to obtain a judgment restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the State, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year

before the commencement of the action, has paid, a tax therein. . . ."

STATEMENT OF THE CASE

A. The Complaint

Petitioners alleged that they are "lower income" residents of the City of Duarte, California ("Duarte" or "the City"), who pay housing rent in excess of 40 percent of their gross monthly incomes. J.A. 616 (First Amended Complaint ["Complaint"], par. 6).[1] They further alleged that they "have paid a tax to the City within one year prior to the commencement of this action." J.A. 617 (Complaint, par. 9). On August 27, 1990, after exhausting their administrative remedies by presenting their written objections to the

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[1] "J.A." refers to the Joint Appendix filed with the California Court of Appeal in this case. The California Health and Safety Code defines "lower income households" as those whose income does not exceed the qualifying limits for lower-income families as currently established under Section 8 of the United States Housing Act of 1937. Health & Safety Code § 50079.5 (West 1986). Petitioner ALLEN alleged that she pays rent exceeding 50 percent of her gross monthly income; petitioner FEINNER alleged that she pays rent exceeding 40 percent of her gross monthly income. Complaint, par. 6 (J.A. 616). California law defines "Affordable Rent" for lower-income households as equalling 30 percent or less of a family's gross income. Health & Safety Code § 50053 (b) (2) (West 1994 Supp.).

City Clerk of Duarte (Statement of Decision ["Trial Court Decision"], App. D at 4), petitioners filed in the Superior Court for Los Angeles County their timely complaint challenging the validity of Duarte's Amendment No. 1 to its Redevelopment Plan for the Rancho Duarte Phase III Redevelopment Project ("Amendment No. 1" or "the Amendment").

Petitioners based their action on three California statutes that authorize citizens to bring suit challenging actions taken by public agencies of the State:

(1) the California Community Redevelopment Law, California Health & Safety Code Section 33501, which provides that "[a]n action may be brought" pursuant to specified provisions of the California Code of Civil Procedure to determine the validity of a redevelopment plan (Trial Court Decision, App. D at 2);

(2) California Code of Civil Procedure ("CCP") Section 863, one of the provisions specified by Health & Safety Code Section 33501; CCP § 863 provides that if no proceedings have been brought by a public agency (pursuant to CCP § 860) to "determine the validity" of an action taken by the agency, then "any interested person" may bring such a proceeding (known as a "validating action") (Trial Court Decision, App. D at 2);

(3) California Code of Civil Procedure Section 526a, which provides that an action to obtain a judgment "restraining and preventing any illegal expenditure" of funds by a municipality may be brought by "a citizen resident therein" who within the previous year has paid "a tax therein." See Complaint,

Fifteenth Cause of Action ("Injunction against City and Agency to Prevent the Illegal Expenditure of Public Funds)," J.A. 637-38; Court of Appeal opinion, App. A at 23."

Petitioners challenged Amendment No. 1 for failure to comply in a number of respects with both the California Community Redevelopment Law (Health & Safety Code Section §§ 33000 *et seq.*) and the California Housing Element Law (California Government Code §§ 65580 *et seq.*). Under the Community Redevelopment Law ("CRL"), a redevelopment plan may provide that property tax revenues that would otherwise be available to State and local taxing entities from land within the boundaries of the plan may be frozen as of the date the plan is adopted, and any tax revenues generated by increased property values following adoption of the plan may thereupon be allocated to the redevelopment agency instead of the usual taxing entities. See Health & Safety Code § 33670; *Leach v. City of San Marcos*, 213 Cal. App.3d 648, 653 (1989). Although Duarte's original plan for the Rancho Duarte Phase III Redevelopment Project did not include these "tax increment financing" provisions, Amendment No. 1 amended the plan to include them. See Court of Appeal opinion, App. A at 2-3.

Under the Housing Element Law, every community in California is required to adopt, as part of its "general plan," a "housing element" that analyzes the community's low- and moderate- income housing needs, sets goals and quantified objectives for meeting those needs, and adopts a five-year program to implement the objectives. Gov. Code § 65583. Any "interested party" may seek judicial review of a housing

element, and "citizen groups may enjoin a project when the general plan either lacks a relevant element or the element is inadequate." *Buena Vista Garden Apartments Assn. v. City of San Diego Planning Dept.*, 175 Cal. App. 3d 289 (1985); CCP § 1085.

Petitioners challenged Amendment No. 1 on the following grounds, among others:

* That Duarte and its Redevelopment Agency had not made the required finding that the Redevelopment Project area was "blighted" at the time the Amendment was adopted, and that such a finding would not be supported by substantial evidence (J.A. 617-20 (First Cause of Action));

* That there was no substantial evidence to support the required finding that the project's tax increment financing would not cause a significant financial burden or detriment to any taxing entity (J.A. 623-24 (Fifth Cause of Action); see Health & Safety Code §§ 33367 (d) (12) (1990), 33457.1);

* That the Amended Plan failed to effectuate the purposes and policy of the Community Redevelopment Law with regard to expenditures on low- and moderate-income housing, in particular by failing to set aside at least 20 percent of the tax-increment revenues allocated to the Redevelopment Agency for deposit into a Low and Moderate Income Housing Fund (J.A. 624-26 (Sixth Cause of Action); see Health & Safety Code § 33334.2 (a));

* That the City's housing element in effect at the time of the Amendment's adoption was invalid for many reasons (J.A. 626-30 (Seventh Cause of

Action));

* That the findings by the City and its Redevelopment Agency concerning relocation and replacement housing were legally inadequate (J.A. 630-33 (Eighth, Ninth, and Tenth Causes of Action));

* That the City and its Redevelopment Agency would illegally expend tax-increment moneys allocated to the Agency unless they were enjoined from doing so and Amendment No. 1 was declared null and void (J.A. 637-38 (Fifteenth Cause of Action)).

B. The Consolidated Actions

Petitioners were not alone in challenging the validity of Amendment No. 1. Los Angeles County ("the County") and the Citrus Community College District ("Citrus"), both taxing entities that otherwise would receive property tax revenues to be paid to the Duarte Redevelopment Agency under the tax-increment financing provisions of the Amendment, brought separate suits challenging the amended Plan. The three suits were consolidated. App. A at 5. The County and Citrus joined Petitioners in challenging Duarte's failure to make a finding of "blight," but otherwise focused on the Amendment's financial impact on other taxing jurisdictions and did not challenge the housing aspects of the Plan (J.A. 5-29 and 548-568).

C. The Trial Court's Decision

The superior court, after a bench trial, ruled Amendment No. 1 invalid on several grounds. The court ruled that the City was required to make a finding of blight in invoking the tax-increment

provisions of Section 33670, even when that finding would apply to the area of a pre-existing project, and that it had not done so. App. D at 4-5; Cal. Const., Art. XVI, sec. 16; Health & Safety Code §§ 33354.5, 33352, 33367 (d), 33457.1. The court also held the redevelopment plan invalid for failure to meet the housing requirements of the Community Redevelopment Law. Duarte could not make the requisite findings that the amended plan would promote the general welfare and effectuate the purposes of the Community Redevelopment Law, the court held, because the City's Redevelopment Agency had failed to set aside required moneys for the development of low- and moderate-income housing and had otherwise failed to comply with its housing obligations under the CRL. App. D at 5-7. The court further found Duarte's Housing Element invalid, and Amendment No. 1 consequently invalid for failure to be consistent with a valid housing element. App. D at 9-14.

In addition, the court found a lack of substantial evidence to support the City's finding that the tax-increment financing "will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area." App. D at 7-8; Health & Safety Code § 33367 (d) (12). The court further held that the City and Agency had "violated the purposes of the Community Redevelopment Law" in adopting the Amendment, since the evidence produced at the trial "reveals that the purpose of the Amendment is to capture tax increment away from the Citrus College, the County and other taxing entities in the absence of blight and without substantial justification." App. D at 8-9.

Accordingly, the court entered judgment declaring Amendment No. 1 "void and of no effect." App. E at 3. It also permanently enjoined the City and Agency from "taking any action to implement or carry out the Amendment, and from receiving any tax increment revenues . . . attributable to the Amendment." App. E at 3.

The City and its Redevelopment Agency appealed. Petitioners, who had moved to include in the judgment a writ of mandamus compelling Duarte to bring its housing element into compliance with state law within 120 days, cross-appealed from the denial of their motion. App. A at 4-5.

D. The Settlement

After completion of appellate briefing, and five days before oral argument, the City, the Redevelopment Agency, the County, and Citrus, without consulting Petitioners or giving them prior notice, reached a settlement. The settlement provides for a division among the settling parties of the increased property tax revenues resulting from the Redevelopment Project. App. A at 5 n.2. The parties to the settlement then filed with the Court of Appeal, on February 3, 1994, a "Joint Application and Stipulation for Partial Dismissal of Appeal with Prejudice, Reversal of Judgment, and Remand to the Superior Court for Vacation of Judgment and Entry of New and Different Judgment in Favor of Appellants." App. A at 4; see *Neary v. Regents of the University of California*, 3 Cal.4th 273 (1992).[2]

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[2] Counsel for Duarte described the settlement as follows: "Duarte, Citrus, and the County have agreed

The Court of Appeal then requested the parties to submit, the next day, letter briefs addressing which issues on appeal were rendered moot by the settlement.

Petitioners acknowledged that one minor issue, which they had no interest in raising, was rendered moot. Petitioners' Letter Brief of Feb. 4, 1994, at 1. Duarte contended that Petitioners' Fifth Cause of Action, alleging a lack of substantial evidence that Amendment No. 1 would not cause a significant financial burden or detriment to County or Citrus, was rendered moot. Duarte's Letter Brief of Feb. 4, 1994, at 3. Duarte further contended that Petitioners "do not have standing to second-guess the County and Citrus on this subject." *Id.* Duarte did not challenge Petitioners' standing with respect to any other issue. Duarte did note, as did Petitioners, that since the actions were consolidated there could be only a single final judgment. *Id.* So if the court affirmed the trial court's judgment in the Allen and Feinner case, "the settlement reached by Duarte, Citrus, and the County cannot be enforced." *Id.*

E. The Court of Appeal's Opinion

The opinion of the Court of Appeal was issued April 14, 1994, and stamped "Not To Be Published."

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that the trial court judgment should be reversed and the matter remanded for entry of a new and different judgment validating Amendment No. 1." Letter Brief dated Feb. 4, 1994, at 2 (emphasis in original).

App. A at 1, 24.[3] The court noted that Duarte, at oral argument, had "stated its belief that the standing issue went only to the fifth cause of action" (alleging a significant financial burden on the taxing agencies). App. A at 12. The court ruled, however, that "the standing issue envelops the entire action" (App. A at 12) and that "Allen and Feinner did not have standing to bring the action." App. A at 6.

The Court of Appeal reviewed the case law under Code of Civil Procedure section 863, which authorizes "any interested person" to bring a validation action if the agency fails to do so. It first considered *Sweetwater Valley Civic Assn. v. City of National City*, 18 Cal. 3d 270 (1976). In that case the California Supreme Court reviewed, and unanimously rejected, the finding of a city and its redevelopment agency that an area included in a redevelopment plan was blighted. The court in *Sweetwater* described the plaintiff association as "a group of 600 taxpayers, residents, and property owners of Sweetwater Valley." 18 Cal.3d at 273. The court did not discuss standing, stating that Code of Procedure section 863 "permits any 'interested person' to bring the action" if the agency does not. *Id.* at 277.

The Court of Appeal concluded that *Sweetwater* "did not consider the issue of standing and thus cannot

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[3] Under the California Rules of Court, an unpublished opinion "shall not be cited or relied on by a court or a party in any other action or proceeding," with exceptions for law of the case, res judicata, collateral estoppel, and ancillary criminal or disciplinary proceedings. Rule 977 (a).

be invoked as authority on this point."[4]

The Court of Appeal next discussed *Card v. Community Redevelopment Agency*, 61 Cal. App. 3d 570 (1976). The court there, in affirming the invalidation of a city's ordinance amending a redevelopment plan, addressed the plaintiffs' standing as follows:

> The Agency also challenges the standing of plaintiffs to sue, but plaintiffs clearly are interested persons within the meaning of Code of Civil Procedure section 863 in view of the fact that each was subsequently stipulated to be a citizen, resident and taxpayer of the city and "a person interested in the matter of the amendments to the redevelopment plans for the Monterey Hills Project No. 1." *Id.* at 574-575 n.6.]

The Court of Appeal said of *Card*: "Given that

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[4] The court cited two cases. In *McDowell & Craig v. City of Santa Fe Springs*, 54 Cal. 2d 33 (1960), the court stated that "cases are not authority for propositions not considered." *Id.* at 38. The court in *McDowell* was referring to a question with which the cited court was "not . . . dealing" (*id.*) -- that is, a dictum -- not to a question (like standing in *Sweetwater*) that the court decided but did not discuss. The *McDowell* court stated in the sentence preceding the one quoted by the Court of Appeal: "It is elementary that the language used in any opinion is to be understood in the light of the facts and the issue then before the court." *Id.* The other cited case, *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035, 1044 n.5 (1993), handled *Sweetwater* as did the Court of Appeal here, also citing *McDowell*.

the plaintiffs were stipulated to be interested persons, their description as citizens and residents of the defendant city and 'taxpayers' on some undisclosed basis was superfluous and is of no assistance." App. A at 20.

The Court of Appeal turned to *Regus v. City of Baldwin Park*, 70 Cal. App. 3d 968 (1977). The court there, in ruling a redevelopment project invalid for lack of blight, held that the plaintiffs had standing both as "interested persons" under Section 863 and as taxpayers under Code of Civil Procedure Section 526a. *Id.* at 972. The individual plaintiffs in *Regus* were "residents and taxpayers" of the defendant city. *Id.* at 971. They also owned real property (outside the Project area) that had been assessed for taxes within the past year by Los Angeles County and other taxing agencies that levied taxes on property within the Project area. *Id.* The plaintiff unincorporated League was "composed of City residents." *Id.* No individual plaintiff or member of the League resided or owned property within the Project area. *Id.*

The *Regus* court, in holding that the plaintiffs had standing to bring both a validation action and a taxpayer's action, relied on *Sweetwater* and *Card, supra*. The court stated that the California Supreme Court in *Sweetwater*, "without discussion of standing," had "entertained a civic association's attack on a redevelopment project" where "plaintiff ownership of property within the project area was not alleged" and was unlikely. 70 Cal. App. 3d at 971-972. Likewise in *Card*, the court said, the stipulation "did not declare that plaintiffs owned property within the project area." *Id.* The court held that the *Regus* plaintiffs, "[a]s taxpayers of the City of Baldwin Park and of the

County of Los Angeles," had a "financial interest in the outcome of this proceeding" -- based on the diversion of tax revenues from the taxing agencies to which they paid taxes -- that "provides sufficient basis to give them standing." *Id.* at 972. The court further held that the plaintiffs, "as resident taxpayers of City and county," also had standing to bring a taxpayer's action under Code of Civil Procedure section 526a. *Id.*

The Court of Appeal determined that *Regus* "does not fully analyze the issue." App. A at 20. The court criticized *Regus* for not providing additional facts about the plaintiffs, such as "what kind of tax each plaintiff paid as a resident within the city" and "whether each plaintiff owned real property within the city." App. A at 20. After further criticism the court declared: "On balance, we conclude that *Regus* does not present a clear rule of law." App. A at 21.

Finally the court considered *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035 (1993).[5] The plaintiffs there, challenging a redevelopment plan of the City of Yorba Linda, alleged that they currently lived in Anaheim but were interested in moving to Yorba Linda. *Id.* at 1039. They further alleged that they

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[5] Another case discussed by the Court of Appeal, *Citizens Against Forced Annexation v. County of Santa Clara*, 153 Cal. App. 3d 89 (1984) (App. A at 16, 21), dealt with annexation rather than redevelopment. The case appears to go further than *Regus* in holding that an organization composed of residents of the affected county had standing to challenge annexations apparently anywhere in the county. 153 Cal.App.3d at 97-100.

each had paid a tax -- conceded to be sales tax -- to Yorba Linda within the prior year. *Id.* at 1039 and n. 2. One plaintiff also alleged ownership of property in Orange County (which includes both cities). *Id.* at 1040.

The court upheld dismissal of the action for lack of standing. *Id.* at 1038. "Both plaintiffs are residents of Anaheim, not Yorba Linda," the court stated (*id.* at 1043). The court noted the contrast with *Regus*, where the plaintiffs "resided in the city covered by the redevelopment project." *Id.* at 1044. "Regus does not state a party has standing where he or she is merely a county taxpayer," the court continued. *Id.* With regard to the plaintiffs' taxpayer's action under Code of Civil Procedure section 526a, the court noted that standing requirements under that provision had been "liberally construed," but said a plaintiff nonetheless "must establish he or she is a taxpayer." *Id.* at 1047. The plaintiffs admitted they had paid to Yorba Linda only a sales tax (*id.* at 1038 n.2), and "a sales tax is a levy imposed on the retailer, not the consumer," the court said. *Id.* at 1047.

The Court of Appeal asserted that "Allen and Feinner allege little more than did the plaintiffs in *Torres*." App. A, at 19. Like the plaintiffs in *Torres*, Allen and Feinner "are lower income persons who live in rental housing," the court said. *Id.* Moreover, Feinner "receives Aid to Families with Dependent Children and qualifies to receive county supported health services." *Id.* Allen and Feinner "[b]oth paid `a tax' within the City of Duarte; they do not allege it was a tax assessed on real property located there." *Id.* The court acknowledged that "[u]nlike the *Torres* plaintiffs, Allen and Feinner are residents of the

defendant city." *Id.* It concluded, however, "that mere residency and the payment of an unspecified tax within the defendant city is insufficient to confer standing." *Id.*

The Court of Appeal also denied Petitioners standing to bring a taxpayer's action under Code of Civil Procedure section 526a. App. A at 23. Relying on *Torres*, the court declared that payment of a sales tax "does not confer standing" (App. A at 23).[6] After noting once more that Petitioners "alleged that they are lower income persons," the court stated: "They did not specify that they had paid a property tax within the City of Duarte and no evidence was offered at trial that either had paid such a tax." *Id.* The court held that Petitioners lacked standing to bring a taxpayer's action. *Id.* at 23.

The Court of Appeal thus reversed the trial court's judgment with respect to Petitioners. *Id.* at 23-24. With respect to the other parties, it dismissed the appeal and remanded the matter to the trial court for further proceedings consistent with the agreements of the parties, citing *Neary v. Regents of the University of California*, 3 Cal. 4th 273 (1992)). App. A at 24. The final page of the court's opinion, like the first page, bears the stamp, "Not To Be Published." *Id.*

Petitioners filed a timely Petition for Rehearing. In it they challenged the Court of Appeal's denial of their standing as a violation of their right to the Equal

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[6] Petitioners alleged having paid "a tax to the City." Complaint, par. 9, J.A. 617. Unlike *Torres*, nothing in the record here establishes that this was a sales tax.

Protection of the laws under the Fourteenth Amendment. Petition for Rehearing at 3, 12-17. The Petition also challenged the Court of Appeal's denial of standing as contrary to existing precedent. *Id.* at 2, 9-11. The Petition was denied on May 16, 1994. Petitioners then filed a timely Petition for Review with the California Supreme Court, raising these and other issues. The Petition was denied on July 13, 1994.

REASONS FOR GRANTING THE WRIT

The California Court of Appeal has ruled that Petitioners did not have standing to challenge Duarte's redevelopment plan, through either a "validation action" under Section 863 of the Code of Civil Procedure or a taxpayer's action under Section 526a of that Code, because Petitioners did not pay a tax on real property located in Duarte. This decision, denying Petitioners access to the courts because they do not own land, violates Petitioners' rights to the Equal Protection of the Laws and to Due Process of Law under the Fourteenth Amendment.[7]

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[7] The Court of Appeal suggested that "[t]wo recent events," the settlement by the governmental parties and a certification by the California Department of Housing and Community Development that Duarte's housing element now conformed to state law, perhaps mooted the case and somehow supported the court's decision that Petitioners lacked standing to bring the action. App. A at 4-5, 22. The suggestion is wrong. Despite those events the following issues, among others, remain in the case:

First, Section V of the Trial Court's Decision (App. D at 5-7), finding that Duarte's Redevelopment Agency

1. The Court of Appeal's opinion is clear in denying standing to Petitioners, with respect to both the validation action authorized by Code of Civil Procedure Section 863 and the taxpayer's action authorized by Code of Civil Procedure Section 526a, because Petitioners did not pay a tax on real property located in Duarte. The court states with regard to the Section 863 action: "Both [Petitioners] paid 'a tax'

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had failed to set aside 20 percent of the taxes allocated to it for at least the fiscal years 1989-90 and 1990-91, as required by the Community Redevelopment Law, is not affected by either event. Second, Section X of the Trial Court's Decision (App. D at 9-14), finding the City's Housing Element deficient, is not mooted by either event. As the Trial Court noted (*id.* at 9), state law requires that the City's general plan (including its Housing Element) have been in compliance with law at the time the Redevelopment Plan was adopted, or else the Plan was invalid *ab initio*. *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531 (1990). Further, the DHC's approval of the new Housing Element is not presumptively correct, but is only entitled to some deference in a court's determination of the new Element's validity. See Government Code § 65585 (a), (d)-(f); *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698, 701-702 (1981). Third, Sections III, IV, VIII, and IX of the Trial Court's Decision (App. D at 4-5, 8-9) are not addressed by either event. These sections involve the basic invalidity of the Redevelopment Plan as a result of the City's failure to make the required finding of blight (and related findings). In sum, this case is not moot; the Court of Appeal has only tried to make it so by ejecting Petitioners from it.

within the City of Duarte; they do not allege it was a tax assessed on real property located therein." App. A at 19. The court states with regard to the Section 526a action: "They [Petitioners] did not specify that they had paid a property tax within the City of Duarte and no evidence was offered at trial that either had paid such tax." App. A at 23.

Petitioners in bringing this action were exercising their First Amendment right to petition their Government for a redress of grievances. As this Court has stated: "Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

Petitioners had initially sought to exercise their right to petition without involving the courts, by submitting to the city council of Duarte their objections to the amended Redevelopment Plan. See App. D at 4. Those objections were based on the grounds ultimately put forth in this action. When the city council rejected the objections, Petitioners resorted to the only remaining avenue by which they might petition for a redress of their grievances: a court action to adjudicate the validity of Duarte's Redevelopment Plan.

This is an avenue deliberately made available by the Legislature and the law of California. Section 863 of the Code of Civil Procedure provides that, if a public agency has not itself brought a proceeding to "validate" action it has taken, "any interested person" may do so. In addition, the California Community Redevelopment Law specifically provides for the

bringing of such actions to test the validity of redevelopment plans. Health & Safety Code § 33501. Further, Section 526a of the Code of Civil Procedure authorizes a "taxpayer action" to prevent the illegal expenditure of municipal funds, an action that may be brought by any "citizen resident" in the municipality who within the previous year has paid "a tax therein." The California Supreme Court has said of Section 526a:

> The primary purpose of this statute, originally enacted in 1909, is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." [Citation omitted.]
>
> California courts have consistently construed section 526a liberally to achieve this remedial purpose. . . .

Blair v. Pitchess, 5 Cal.3d 258, 267-268 (1971).

Consistently with the language and the evident intent of these statutes, there appears to be no California redevelopment case, other than the present one, in which standing has been denied to plaintiffs who were residents and taxpayers, or even residents alone, of the municipality undertaking the Project. This can be seen in the opinion of the Court of Appeal. App. A at 13-18. In *Sweetwater Valley Civic Assn. v. City of National City*, 18 Cal. 3d 270 (1976), the California Supreme Court did not question the standing -- though this is an issue the court will raise *sua sponte* -- of any of "a group of 600 taxpayers, residents, and property owners of Sweetwater Valley."

Agency, 61 Cal. App. 3d 570 (1976), the court held that the plaintiffs had standing under Section 863 because each was stipulated to be "a citizen, resident and taxpayer of the city" and a "person interested" in the redevelopment plan. *Id.* at 574-575. Nothing was said about owning property. In *Regus v. City of Baldwin Park*, 70 Cal. App. 3d 968 (1977), the court held squarely that the individual plaintiffs had standing under Section 863 "[a]s taxpayers of the City of Baldwin Park and of the County of Los Angeles," and under Section 526a "as resident taxpayers of City and county." 70 Cal. App. 3d at 972. The *Regus* court also accorded standing to an unincorporated association "composed of City residents." *Id.* at 971. Finally, in *Torres v. City of Yorba Linda*, 13 Cal. App. 4th 1035 (1993), standing to challenge the redevelopment plan of Yorba Linda was denied to the two plaintiffs who were "residents of Anaheim, not Yorba Linda." *Id.* at 1043.

2. The apparently unique denial of standing to these Petitioners,[8] on the ground that they do not pay

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[8] Since the opinion of the Court of Appeal is "Not To Be Published," it presumably will not be a precedent for future decisions in California. See Cal. Rule of Ct. 977 (a); *supra* note 3. At the same time the opinion deviates from the preexisting law (a fact that should have led to its publication, under the standard providing for publication of an opinion that "creates an apparent conflict in the law," Cal. Rule of Ct. 976 (b) (2)). The rule applied by the Court of Appeal thus departs from past cases and will not be applied to future ones -- it is being applied to Petitioners alone. Petitioners submit that this treatment "breaches the principle that litigants in similar situations should be treated the same, a

taxes on real property in Duarte, denies them access to the courts in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), this Court held that Due Process prohibited a State from imposing court fees and costs for the filing of divorce actions upon indigent welfare recipients who were unable to pay those amounts. Subsequently, in *United States v. Kras*, 409 U.S. 434 (1973), the Court distinguished a $50 filing fee for obtaining a discharge in voluntary bankruptcy. The majority in *Kras* emphasized that "[r]esort to the court" was not Kras's "sole path to relief" (*id.* at 446), as it had been for the persons seeking divorce in *Boddie*, and further noted that the $50 fee could be paid in installments over six months, producing a weekly average payment of $1.92. *Id.* at 449. Again in *Kaarmas v. Dickinson v. Public Schools*, 487 U.S. 450 (1988), where the Court upheld against Equal Protection attack a school bus user fee, it noted that this was not a requirement, like the one in *Boddie*, that "barred indigent litigants from using the judicial process in circumstances where they had no alternative to that process." *Id.* at 460.

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fundamental component of *stare decisis* and the rule of law generally," *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439, 2444 (1991) (opinion of Souter, J.) -- and thus denies to Petitioners the Equal Protection of the laws. See also *County of Los Angeles v. Kling*, 474 U.S. 936, 937 & n.1 (1985) (Stevens, J., dissenting); Weaver, *The Precedential Value of Unpublished Opinions*, 39 Mercer L. Rev. 477, 477 n.1 (1988); Robel, *The Myth of the Disposable Opinion*, 87 Mich. L. Rev. 940, 948 (1989).

In this case, Petitioners had "no alternative" to the judicial process. Petitioners did first invoke the political process to assert their objections to Duarte's Redevelopment Plan, by presenting those objections to the city council. When their efforts were rejected, Petitioners were left with resort to the courts as their "sole path to relief" in testing the Plan's validity. Indeed, Petitioners were required to bring their action within 60 days after adoption of the Redevelopment Plan, or be forever barred from challenging its validity. Health & Safety Code § 33500; Code of Civil Procedure § 863; *Sweetwater, supra*, 18 Cal.3d at 277.

Moreover, the requirement that the Court of Appeal has imposed on Petitioners, as a barrier to their access to the courts, is nothing like a $50 fee that can be paid at the rate of $1.92 per week. It is a requirement of land ownership. Under the court's decision, Petitioners had to go out and buy a piece of land in Duarte before being allowed to test Duarte's Redevelopment Plan in court. This is not a requirement that lower-income citizens can realistically be expected to meet. This case thus is governed by *Boddie*, in view of the implacable burden the Court of Appeal has imposed on Petitioners' First Amendment right of access to the courts.

3. Even when the Court of Appeal's ruling is subjected to the "rational relationship" test under the Equal Protection Clause (see *Kadrmas, supra*, 487 U.S. at 4582), it cannot be sustained. There is no rational relationship between a requirement of property ownership in the city and standing to challenge the city's Redevelopment Plan.

In *City of Phoenix v. Kolodziejski*, 399 U.S. 204

(1970), this Court held that a State could not, consistently with the Equal Protection Clause, restrict the vote to real property taxpayers, even in elections to approve the issuance of general obligation bonds. The Court declared that,

> . . . although owners of real property have interests somewhat different from the interests of nonproperty owners in the issuance of general obligation bonds, there is no basis for concluding that nonproperty owners are substantially less interested in the issuance of these securities than are property owners.

399 U.S. at 212. See also *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (invalidating provisions of a Louisiana law granting only property taxpayers the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility); *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969) (invalidating provisions of a New York law limiting the vote in school district elections to persons who either have children enrolled in local public schools or own, or lease, taxable real property within the district).

The rational relationship that the Court found lacking in *City of Phoenix* is even more clearly lacking here. First, just as the Court noted "all residents of Phoenix, property owners and nonproperty owners alike, have a substantial interest in the public facilities and the services available in the city and will be substantially affected by the ultimate outcome of the bond election" (399 U.S. at 209), all residents of Duarte will be substantially affected by the Redevelopment Plan. Indeed, given the emphasis of

California's redevelopment law on expanding the supply of low- and moderate-income housing,[9] Petitioners and other lower-income persons who lack adequate housing can be said to have a greater interest in the Redevelopment Plan than most property owners.

Second, there is no distinction between property- and non-property - owning residents of Duarte with respect to their contributions to the tax revenues of Duarte's Redevelopment Agency. No property tax revenues from property outside the Project area are allocated to the Agency. Health & Safety Code § 33670. Hence property taxpayers outside the Project area, to whom the Court of Appeal would accord standing (App. A at 19, 23), make no property tax contribution to the Project and thus have no greater interests than Petitioners in this regard.[10]

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[9] *See, e.g.*, Health & Safety Code § 33071: "The Legislature finds and declares that a fundamental purpose of redevelopment is to expand the supply of low- and moderate-income housing, ..." See also *id.* §§ 33334.2, 33334.3, 33334.6, 33413.

[10] In *Phoenix*, the Court declared that limiting the franchise to property owners would be unjustified even in municipalities that look only to property tax revenues for servicing general obligation bonds, since "a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord . . . ." 399 U.S. at 210.

Third, the Court of Appeal's holding presumably would confer standing also on nonresident property taxpayers of Duarte. App. A at 19, 23. Such nonresidents are likely to have less interest in the Redevelopment Plan and its consequences than Petitioners and others who live in Duarte.

Fourth, one of the Petitioners, Laura Feinner, receives County-supported health services. App. A at 19. She is thus particularly interested in the effects the Redevelopment Plan may have on tax revenues to the County.

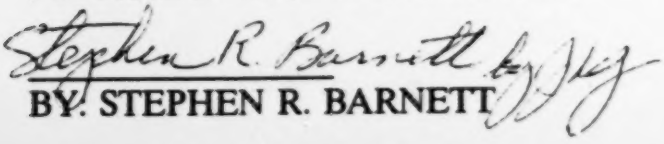
In sum, this Court's conclusion in *City of Phoenix* applies at least as strongly to this case. There is no basis for concluding, as the Court of Appeal did, that non-property - tax paying residents of Duarte, especially lower-income ones like Petitioners, have less interest in the Redevelopment Plan than do property taxpayers. The Court of Appeal's denial of Petitioners' access to the courts in this case thus violated their rights under the Equal Protection Clause.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that a writ of certiorari be granted.

Respectfully submitted,

STEPHEN R. BARNETT
JONATHAN LEHRER-GRAIWER



BY: STEPHEN R. BARNETT

APPENDIX A

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITRUS COMMUNITY COLLEGE DISTRICT,	) No. B067380
Plaintiff and Respondent,	) (Super.Ct.No.)) BC007801)
v.	)
REDEVELOPMENT AGENCY OF THE CITY OF DUARTE, et al.,	)
Defendants and Appellants.	)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard C. Hubbell, Judge. Reversed and Dismissed.

Rutan & Tucker, Dan Slater and Jeffrey M. Oderman for Defendants and Appellants.

De Witt W. Clinton and Manuel A. Valenzuela for Plaintiff and Respondent City of Los Angeles.

Wagner, Sisneros & Wagner and T.A. Wagner for Plaintiff and Respondent Citrus Community College District.

John E. Rittmayer and Jonathan Lehrer-Graiwer for Plaintiffs and Respondents Alice Allen and Laura Feinner.

INTRODUCTION

On May 31, 1988, the Duarte City Council approved a redevelopment plan (Plan) for the Rancho Duarte Phase III Redevelopment Project. At that time, the Plan did not include the tax increment financing provisions authorized under Health and Safety Code Section 336700.[1] Such provisions are optional and may be added later by amending an existing plan. (§ 33457.) They allow tax monies resulting from any increase in the assessed valuation of property within the project area to be placed in a special fund for repayment of the indebtedness incurred in financing that project, while the taxing agency continues to receive "the same amount of money it would have realized under the assessed valuation existing at the time the project was approved. . . ." (Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 259.)

In March 1989, after having expended more than $4 million to acquire about 30 percent of the real property covered by the Plan, Duarte determined that the cost of the project would substantially exceed previous estimates. Duarte notified the public and Los Angeles County, its flood control district, public library, and consolidated fire protection district (collectively County), and Citrus Community College District (Citrus) of its intent to amend the Plan to include section 33670 tax increment financing provisions (Amendment). (§ 33344.5.) Duarte stated that "[o]ther aspects of the Redevelopment Plan and Project Area are not proposed to be changed,

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[1]All statutory references are to the Health and Safety Code unless otherwise indicated.

modified or extended by the Amendment, except as necessary to provide for the collection of tax increment revenues."

On May 29, 1990, County submitted its written objections to the proposed Amendment, including that "[t]he tax increment financing provisions of the Amendment will cause a significant financial burden and detriment on the County by depriving the County of its share of the property taxes which are needed for the continued provision of service to the area" and that Duarte had failed to make a current finding that the geographical area included in the Plan was "blighted."

On June 26, 1990, Duarte approved its Ordinance No. 666, thereby adopting the Amendment.

In a consolidated action, County, Citrus, and two private citizens, Alice Allen and Laura Feinner, all respondents herein, challenged the validity of the amendment on several grounds and requested declaratory and injunctive relief and the issuance of a writ of mandamus to compel Duarte to reconform its underlying housing element to comply with state law.

Trial was held and the court took the matter under submission. The court issued a 14-page statement of decision and granted judgment in favor of respondents. The judgment voided the Amendment and permanently enjoined Duarte from implementing it. Allen and Feinner moved to set aside and vacate the judgment and substitute a new judgment which would include the issuance of a writ of mandamus to compel Duarte to bring its housing element into compliance with state law within 120 days. The court

denied the motion. Duarte's appeal and Allen and Feinner's cross-appeal, based on the denial of their motion, followed.

Two recent events impact this case. First, Duarte has modified its housing element to conform to state law, as certified by the California Department of Housing and Community Development. Thus, we dismiss Allen and Feinner's cross-appeal, which sought a new judgment requiring modification of the housing element.

Second, on February 3, 1994, Duarte and County filed a joint application and stipulation for partial dismissal of the appeal with prejudice, reversal of judgment, and remand to the superior court for vacation of judgment and entry of a new and different judgment in favor of Duarte. This step was based on a settlement agreement between Duarte and the County respondents and a separate agreement between Duarte and Citrus[2] Allen and Feinner did

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[2] With respect to County taxing entities flood control district, library, and fire district, the settlement agreement provides that all of their proportionate share of the expected increased tax revenues from the amended redevelopment plan will be passed through to them, though the transfer of some monies may be deferred for use by Duarte under certain specified circumstances. The agreement passes through a portion of County's share, deferring payment of the balance under specified circumstances. Duarte is required to repay all retained monies and accrued interest. The agreement also provides that a percentage of any monies diverted to Duarte from County or its taxing entities shall be set aside for low-

not join in the application and stipulation. Duarte acknowledges that there can be only one judgment entered because the actions were consolidated (Committee for Responsible Planning v. City of Indian Wells (1990) 225 Cal.App.3d 191, 195), the practical effect of which is that it cannot have a final judgment validating the Amendment with respect to County and another invalidating the Amendment with respect to Allen and Feinner. This court went forward with the scheduled oral argument on February 8, 1994, in conjunction with our review of the record, to ascertain what issues remained for consideration. We conclude that Allen and Feinner did not have standing to bring the action. We reverse the judgment as to Allen and Feinner and order the trial court to vacate the judgment with respect to Allen and Feinner. Pursuant to the agreements reached between County, Citrus and Duarte, we dismiss the appeal and remand the matter to the trial court for further proceedings consistent with the agreements of the parties. (Neary v. Regents of University of California (1992) 3 Cal.4th 273.)

DISCUSSION

In their first 12 causes of action, Allen and Feinner asserted that Duarte had either failed to make findings as required by §33367 or that the findings

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and moderate-income housing in compliance with the CRL. The separate agreement with Citrus provides for a transfer of to percent of its share of tax increment revenues, less that required statutory set aside for low-and moderate-income housing, resulting in a net transfer of 48 percent.

made were not supported by substantial evidence.[3]

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[3] Former section 33367 provides in pertinent part: "The ordinance shall contain all of the following: [¶] . . . . [¶] (d) The findings and determinations of the legislative body that: [¶] (1) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part. [¶] (2) The redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare. [¶] . . . . [¶] (4) The redevelopment plan conforms to the general plan of the community. [¶] (5) The carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part. [¶] . . . . [¶] (7) The agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area. [¶] (8) There are, or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to the displaced families and persons and reasonably accessible to their places of employment. [¶] (9) All noncontiguous areas of a project area are either blighted or necessary for effective redevelopment and are not included for the purpose of obtaining the allocation of taxes from the area pursuant to Section 33670 [provision for division

The 13th cause of action alleged that Duarte had

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of taxes generated by taxable property in redevelopment project area] without other substantial justification for their inclusion. [¶] (10) Inclusion of any lands, buildings, or improvements which are not detrimental to the public health, safety, or welfare is necessary for the effective redevelopment of the area of which they are a part; that any area included is necessary for effective redevelopment and is not included for the purpose of obtaining the allocation of tax increment revenues from the area pursuant to Section 33670 without other substantial justification for its inclusion. [¶] (11) The elimination of blight and the redevelopment of the project area could not be reasonably expected to be accomplished by private enterprise acting alone without the aid and assistance of the agency. [¶] (12) The effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area. This finding shall only be required when the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670. [¶] (e) A statement that the legislative body is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that pending the development of the facilities, there will be available to the displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement." (Stats. 1984, ch. 147, § 12, pp. 506-508.)

failed to produce an adequate report to accompany the Plan (§ 33352). They also sought declaratory and injunctive relief, denominated as their 14th and 15th causes of action, respectively.[4] Allen and Feinner challenged the Project by purporting to bring both a validation action, citing section 33501 and Code of Civil Procedure section 863, and a taxpayer's action to enjoin illegal municipal expenditures, citing Code of Civil Procedure section 526a.[5]

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[4] Allen and Feinner's original complaint, filed August 27, 1990, and their first amended complaint, filed June 18, 1991, list identical causes, of action, set forth in virtually identical language.

[5] At the time Allen and Feinner commenced their action, section 33501 provided: "An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine [the validity of a redevelopment plan], including . . . the legality and validity of all proceedings theretofore taken for or in any way connected with . . . the adoption of the redevelopment or renewal plan. . . " (Stats. 1965, ch. 1665, § 40, p. 3788.) This section also applies to redevelopment plans as amended. (Card v. Community Redevelopment Agency (1976) 61 Cal.App.3d 570, 574, fn. 5.)

Code of Civil Procedure section 863 provides: "If no proceedings have been brought by the public agency pursuant to this chapter, any interested person may bring an action within the time and in the court specified . . . to determine the validity of such matter . . . " (Emphasis added.)

Duarte demurred and argued that Allen and Feinner did not have standing to allege a significant financial burden on the taxing agencies, plaintiffs' fifth cause of action.[6] A minute order reflects that the trial

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Code of Civil Procedure section 526a provides: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..."

[6] The operative paragraphs of the fifth cause of action read: "43. Section 3(g) of Ordinance No. 666 purports to contain a finding that the increased tax increment financing any taxing agency deriving revenues from the Project Area. This finding is not supported by substantial evidence. [¶] 44. The City has abused its discretion in failing to consider the financial impacts of the tax allocation and bonding limits adopted by the Redevelopment Plan on the ability of Los Angeles County and other agencies to provide public and social services, particularly to persons and families of low and moderate income. Among other things, the City has failed to fully consider the impact of the Jarvis-Gann Initiative and the fact that taxing agencies are deprived of substantial tax revenues as a result of the Redevelopment Plan and that they are restricted in their ability to raise additional tax revenues, as a result of said initiative, in

court rejected the argument, citing Code of Civil Procedure section 863 and Regus v. City of Baldwin Park (1977) 70 Cal.App.3d 968 (discussed below). In its answer, Duarte again raised this issue as an affirmative defense, repeating its assertion with respect to the fifth cause of action, and, in addition, asserting that Allen and Feinner did not have standing to request declaratory relief or an injunction to prevent the contemplated expenditure of public funds. Duarte again argued the issue in its trial brief and cites the argument in its brief on appeal.

Allen and Feinner stated in their first amended complaint that they are lower income residents of the City of Duarte who pay housing rent in excess of fifty percent of their gross monthly incomes and are "beneficially interested in the enforcement of [Duarte's] public duties. . . ." They asserted that the alleged diversion of taxes would "decrease the funds available to Los Angeles County for social services, including health and welfare benefits to lower income persons and families." They further alleged that they had paid "a tax" to the City of Duarte within one year of the commencement of this action.

The record further discloses that Allen and Feinner agreed in their opposition to a motion for summary adjudication of issues by Duarte that it was undisputed they are lower income residents of the City of Duarte. Also, Feinner declared that county provided her Aid to Families with Dependent Children

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order to compensate for the lost revenues. [¶] 45. Consequently, the Redevelopment Plan and Ordinance No. 851 approving and adopting it, are null and void."

and that she qualified to receive medical care at county hospitals and clinics should the need arise.

At oral argument, in response to questions from the bench, Duarte stated its belief that the standing issue went only to the fifth cause of action, in which Allen and Feinner alleged that the Amendment would result in a significant financial burden on the taxing agencies. Our review of the statutes and case law demonstrates that the standing issue envelops the entire action, thus leading to the reversal of the judgment with respect to these respondents and dismissal of the appeal.[7]

Standing to bring validation action (Code Civ. Proc. §863):

Under Code of Civil Procedure section 367, "[e]very action must be prosecuted in the name of the real party in interest. . . ." (Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035, 1040.) "Generally, a plaintiff must show he or she or those he or she properly represents have either suffered or are

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[7] Shortly before oral argument, Allen and Feinner requested judicial notice of a photocopy of what purports to be a letter dated November 1, 1988, from Elizabeth G. Hill, California Legislative Analyst, to State Senator Robert Presley, Chairman, Senate Appropriations Committee, regarding the replacement of revenues lost to public schools as a result of the CRL. The request is denied on the ground that the proffered evidence does not constitute an official act of the California Legislature. (Evid. Code, § 452, subd. (c).)

threatened with an injury of sufficient magnitude that it is reasonably assured the lawsuit will provide an adequate presentation of all relevant facts and issues. [Citation.]" (Id. at p. 1041.) As noted (fn. 5, ante), a public entity itself may bring an action to determine the validity of its redevelopment project. (Code Civ. Proc., § 863; § 33501.) Should it elect not to do so, "any interested person may bring an action . . . to determine the validity of such matter." (Emphasis added; Code Civ. Proc., § 863; id. at p. 1042.) Thus, the issue is whether Allen and Feinner qualify as "interested" persons. As Torres v. City of Yorba Linda, supra, notes, few cases have discussed the term "interested person" as used in Code of Civil Procedure section 863.

In Sweetwater Valley Civic Assn. v. City of National City (1976) 18 Cal.3d 270, defendant made a finding under the CRL that a 130 acre area was "blighted." The area comprised a 103-acre golf course, in active operation and open to the public, and 27 unproductive acres; 115 acres were owned by a single party. The California Supreme Court determined that the blight finding was subject to judicial review under section 33501. (Id. at p. 277.) No issue regarding standing was considered. Plaintiff association was described as "a group of 600 taxpayers, residents, and property owners of Sweetwater Valley." (Id. at p. 273.) There is no indication whether Sweetwater Valley was a governmental entity, whether any part of the redevelopment area was located within Sweetwater Valley, or whether any member of the plaintiff association owned property in or otherwise had a direct relationship to the redevelopment project area. The only reference to Code of Civil Procedure section 863 came when the California Supreme Court noted

that "[a]lthough [Code of Civil Procedure section 860] provides for the agency to bring the action, section 863 of that code permits any 'interested person' to bring the action within 60 days if the agency does not." (Id. at p. 277.)

In Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570, defendant appealed the invalidation of a city ordinance amending a CRL redevelopment plan for a project area located within the City of South Pasadena. The only reference to Code of Civil Procedure section 863 is stated in a footnote: "The [defendant] also challenges the standing of plaintiffs to sue, but plaintiffs clearly are interested persons within the meaning of Code of Civil Procedure section 863 in view of the fact that each was subsequently stipulated to be a citizen, resident and taxpayer of the city and 'a person interested in the matter of the amendments to the redevelopment plans for the [project].'" (Id. at pp. 574-575, fn. 6, emphasis added.)

In Regus v. City of Baldwin Park, supra, 70 Cal.App.3d 968, plaintiffs challenged defendant's ordinance purporting to adopt a redevelopment plan pursuant to the CRL. The members of a plaintiff unincorporated association and individual plaintiffs were residents and "taxpayers" of defendant city. They resided and owned real property located solely outside the boundaries of the redevelopment project area. The county and other taxing agencies, all of which levied taxes upon property within the redevelopment area, had assessed taxes on these individuals' real property within one year of the filing of the action. (Id. at p. 971.) Regus determined that the individual plaintiffs had standing to bring a validation action, as

well as a taxpayer's action, citing Sweetwater Valley Civic Assn. v. City of National City, supra, 18 Cal.3d 270 and Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570. It noted that Sweetwater had "entertained" a civic association's attack on a redevelopment project where, although its members were taxpayers, residents, and property owners of Sweetwater Valley, there was no allegation that association members owned property within the project area, and where such ownership was unlikely because of the existence of a large landowner. The Regus court acknowledged that Sweetwater had not discussed standing. (Regus v. City of Baldwin Park, supra, 70 Cal.App.3d at pp. 971-972.) With respect to Card, Regus noted that the stipulation regarding standing did not include that the plaintiffs owned real property within the project area.

Regus concluded as follows: "We think it unlikely the Legislature intended to limit review of such projects to actions initiated by the agency itself or by residents of the project area, given the presumptively disadvantaged and blighted condition of a redevelopment project area, which may be largely vacant or in a state of disrepair and disuse. As taxpayers of the City of Baldwin Park and of the County of Los Angeles, plaintiffs have a financial interest in the outcome of this proceeding, in that the tax increment financing of the Project will divert tax revenues from the taxing agencies to which plaintiffs pay taxes to the treasury of the Redevelopment Agency. Such a financial interest is likely to motivate plaintiffs to prosecute the action vigorously and provides sufficient basis to give them standing. [Citation.]" (Id. at p. 972.)

In Citizens Against Forced Annexation v. County of Santa Clara (1984) 153 Cal.App.3d 89, plaintiff unincorporated organization (CAFA), as well as individual plaintiffs who were members of CAFA, challenged the validity of annexations of county territory to the City of San Jose. These annexations had been proposed and accomplished without elections under former Government Code section 35000 et seq. (Municipal Organization Act), which incorporated Code of Civil Procedure section 860 et seq. Defendants demurred on the ground that plaintiffs were not "interested persons" under section 863 and therefore lacked standing to bring the action.

The appellate court held that "plaintiffs who allege an interested relationship to particular annexed territories through land ownership, residency, or voter registration have standing under section 863 of the Code of Civil Procedure to challenge the annexations of those particular territories." (Id. at p. 95.) It concluded that CAFA also had standing as an "interested person" regarding the dismissed territories because of the nature of the organization: (l) it was an appropriate organization to function as a monitor for its members, i.e., to watch for and test the validity of annexation proceedings, especially given the brief 60-day statute of limitation (Code Civ. Proc., § 860); and (2) a direct relationship between some of CAFA's members and the dismissed territories had been alleged. (Id. at pp. 95-98.) The court also noted that a validation action is in the nature of a proceeding in rem, citing Code of Civil Procedure section 860, but that the right asserted by CAFA and its members with respect to annexations "is only the right to see that the government wielded its annexations power properly." (Id. at p. 98.)

In Torres v. City of Yorba Linda, supra, 13 Cal.App.4th 1035, two persons challenged defendant city's proposed amended redevelopment project, asserting in part that the diversion of taxes which would otherwise be paid to the county and other taxing entities would decrease the funds available to the county for social services, including health and welfare benefits for lower income persons and families in general and those benefits "utilized or likely to be utilized" by the plaintiffs. (Id. at p. 1039.) In their first amended complaint, plaintiffs asserted they were "beneficially interested" in the enforcement of the defendants' public duties. They alleged they were residents of another city but were interested in residing in defendant city if they could find decent, safe, sanitary and affordable housing. Each plaintiff had paid a sales tax to defendant city within one year before filing the action. One plaintiff alleged she and her family were classified as "lower income" and either used or were eligible to receive health and other social services funded by the county.

Plaintiffs indicated that, with permission of the court, they would further amend the complaint to allege that one of the plaintiffs was a property owner and property taxpayer in the county and that the alleged failures of the defendant to have an adequate housing element and land use regulations permitting development of affordable housing impacted the price of housing elsewhere in the county, preventing plaintiffs from having the opportunity to purchase affordable housing. During the pendency of the demurrer, plaintiffs moved for issuance of a writ of mandate invalidating the redevelopment plan and directing the defendants to correct the housing element of its plan. Among the exhibits submitted

with respect to this issue was an agreement between the defendants and the county and its fire, flood, and park districts which provided that 65 percent of the county's share and each district's entire share of the expected increased tax revenues from the amended redevelopment plan would be passed through by the defendants.

The trial court sustained the demurrer without leave to amend and determined that the motion for writ of mandate was moot.

The appellate court affirmed. It reviewed Sweetwater Valley Civic Assn. v. City of National City, supra, 18 Cal.3d 270, Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570, Regus v. City of Baldwin Park, supra, 70 Cal.App.3d 968, and Citizens Against Forced Annexation v. County of Santa Clara, supra, 153 Cal.App.3d 89. It concluded that plaintiffs did not have standing to challenge the defendants' redevelopment plan under section 863. It rejected plaintiffs' reliance on Sweetwater on the ground that the case did not consider the issue of standing. It noted that both plaintiffs lived in another city, did not pay property taxes in defendant city, and were not "otherwise beneficially interested in the area covered by the amended redevelopment plan." (Torres v. City of Yorba Linda, supra, 13 Cal.App.4th at p. 1043.) It found the allegations that one plaintiff owned real property and paid property taxes to the county, and that the other claimed she and her family used or were eligible for several social services partially funded by the county with property taxes rendered plaintiffs, "indistinguishable from most other county residents." (Id. at p. 1044; fn. omitted.) It dismissed plaintiffs'

reliance on Regus, noting that the case "does not state a party has standing where he or she is merely a county taxpayer." (Ibid.) Finally, the court found that plaintiffs' assertion that the redevelopment project would divert revenue from local taxing entities was questionable in that the complaint alleged the project was to be financed by issuing bonds secured by tax increment revenue. The court characterized the financing scheme as one which permitted the project to pay "for itself by taking advantage of increased property tax revenues generated by the project area's renovation. [Citations.]" (Ibid.)

In the instant case, Allen and Feinner allege little more than did the plaintiffs in Torres. Allen and Feinner are lower income persons who live in rental housing. Feinner receives Aid to Families with Dependent Children and qualifies to receive county supported health services. Both paid "a tax within the City of Duarte; they do not allege it was a tax assessed on real property located therein. They claim they are "beneficially interested" and assert that the diversion of the tax increment revenue would decrease funding for social services for lower income families, both of which claims are mere conclusions. Unlike the Torres plaintiffs, Allen and Feinner are residents of the defendant city. We conclude that mere residency and the payment of an unspecified tax within the defendant city is insufficient to confer standing.

Sweetwater Valley Civic Assn. v. City of National City, supra, 18 Cal.3d 270 did not consider the issue of standing and thus cannot be invoked as authority on this point. (McDowell & Craig v. City of Santa Fe Springs (1960) 54 Cal.2d 33, 38; Torres v. City of Yorba Linda, supra, 13 Cal.App.4th at p. 1044,

fn. 5.) In Card v. Community Redevelopment Agency, supra, 61 Cal.App.3d 570, it was stipulated that each plaintiff was a "citizen, resident and taxpayer of the city and a person interested in the matter of the amendments to the redevelopment plans for the [project]. (Id. at pp. 574-575, fn. 6.) Given that the plaintiffs were stipulated to be interested persons, their description as citizens and residents of the defendant city and "taxpayers" on some undisclosed basis was superfluous and is of no assistance. (McDowell & Craig v. City of Santa Fe Springs, supra, 54 Cal.2d at p. 38.)

Regus v. City of Baldwin Park, supra, 70 Cal.App.3d 968, does not fully analyze the issue. Regus purports to rely, at least in part, on Sweetwater and Card. In addition, some facts about the plaintiffs which would aid in the analysis are not set forth: it is not disclosed what kind of tax each plaintiff paid as a resident within the city or whether each plaintiff owned real property within the city. The court rejects the idea of limiting standing to residents of the redevelopment project area (which appears to be a very narrow interpretation of the legislative intent), "given the presumptively disadvantaged and blighted condition" of such area, "which may be largely vacant or in a state of disrepair and disuse." (Regus v. City of Baldwin Park, supra, 70 Cal.App.3d at p. 972.) Of course, such an area could well have a high population of lower income residents vitally interested in housing and related matters, a possibility the Legislature appears to have considered in expressing its concern regarding alternative housing for residents when an area is razed. (§ 33367, subd. (d) (7), (8).)) The Regus court concludes that the plaintiffs have standing because they were deemed to have sufficient financial

interest to motivate them to prosecute their action vigorously since the project would divert tax revenues from entities to which plaintiffs' tax payments were distributed. On balance, we conclude that Regus does not present a clear rule of law.

Citizens Against Forced Annexation v. County of Santa Clara, supra, 153 Cal.App.3d 89, interpreting the validation procedure in conjunction with the annexation of land pursuant to the Municipal Organization Act (former Gov. Code, § 35000 et seq.), held that persons who alleged an "interested relationship" through land ownership, residency, or voter registration within the particular annexed territory had standing to challenge annexation of that territory, as did the unincorporated association that functioned as a monitor of annexation proceedings for its members. Allen and Feinner did not allege residency within the project area.

Finally, Torres v. City of Yorba Linda, supra, 13 Cal.App.4th 1035, concluded that allegations of payment of taxes on real property located within the county, a sales tax paid within defendant city, and a "beneficial interest" in the price of housing in the county and eligibility for county social services partially funded by county taxes were insufficient to confer standing.

In addition, Torres also questioned the assertion that funds would be diverted from the taxing entities because the project was to be funded by bonds secured by tax increment revenue. In the instant case, the recent settlement agreements between Duarte and County reflect that ultimately the County taxing entities will receive all tax increment revenues due

them, plus interest should monies be temporarily diverted. The agreement between Duarte and Citrus indicates that approximately half of the expected revenues will be diverted. Allen and Feinner failed to allege a specific beneficial interest in Citrus and how the diversion of tax increment funds would adversely impact them. Since the issue of standing may be raised at any time (Life v. County of Los Angeles (1990) 218 Cal.App.3d 1287, 1292, fn. 3), this recent development further undercuts Allen and Feinner's claim.

As stated in Harman v. City and County of San Francisco (1972) 7 Cal.3d 150: "'The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a . . . court, and not [o]n the issues he wishes to have adjudicated.' [Citation.] A party enjoys standing to bring his complaint into court if his stake in the resolution of that complaint assumes the proportions necessary to ensure that he will vigorously present his case. [Citation.] . . . we must determine standing by a measure of the 'intensity of the plaintiff's claim to justice.' [Citation.]" (Id. at p. 159.) Here, Allen and Feinner failed to allege any adverse impact of the amended redevelopment plan on their residency within the City of Duarte, nor did they offer any evidence of such impact at trial. In view of the fact that Duarte's housing element has since been declared to be in full compliance with state law, and the existence of the recent settlement agreements and application to dismiss the appeal with respect to County and Citrus, we conclude that Allen and Feinner do not have standing to bring a validation action.

Standing to bring taxpayer's action (Code Civ. Proc., 526a):

Allen and Feinner also purport to bring their action under the authority of Code of Civil Procedure section 526a (fn. 5, ante). As discussed in detail in Torres v. City of Yorba Linda, supra, 13 Cal.App.4th 1035, a sales tax is a levy on the retailer, not the consumer, and therefore does not confer standing to bring an action under this section. Allen and Feinner alleged that they are lower income persons living within the City of Duarte, one of whom owns tax assessed real property somewhere in the county. They did not specify that they had paid a property tax within the City of Duarte and no evidence was offered at trial that either had paid such tax. We conclude they lacked standing to bring a taxpayer's action.

DISPOSITION

We reverse the judgment as to Allen and Feinner and order the trial court to vacate the judgment with respect to Allen and Feinner. Pursuant to the agreements reached between County, Citrus and Duarte, we dismiss the appeal and remand the matter to the trial court for further proceedings consistent with the agreements of the parties. (Neary v. Regents of University of California, supra, 3 Cal.4th 273.)

The respective costs on appeal are to be borne by each party.

NOT TO BE PUBLISHED

HASTINGS, J.

We concur:

WOODS (Arleigh), P.J.

KLEIN, (Brett) J.*

*Assigned by the Chairperson of the Judicial Council.

APPENDIX B

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 5/16/94

Legal Services Program
John E. Rittmayer
211 E. Walnut Street
Suite 221
Pasadena, CA. 91101 6423

RE: Allen, Alice
vs.
Duarte, City of Citrus Community College District
2 Civil B067380
Los Angeles NO. BC007801

THE COURT:

Petition for rehearing denied.

APPENDIX C

Second Appellate District, Division Four, No. B067380
S040075

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

CITRUS COMMUNITY COLLEGE DISTRICT
Et Al., Respondents

v.

REDEVELOPMENT AGENCY OF THE CITY OF
DUARTE Et Al., Appellants

Petition for review DENIED.
Request for judicial notice DENIED.

LUCAS
Chief Justice

APPENDIX D

NO. BC 007 801
(Consolidated with BC 008 824
and BC 009 159)

In the Superior Court of the State of California
for the County of Los Angeles

CITRUS COMMUNITY COLLEGE DISTRICT,
Plaintiff,

VERSUS

ALL PERSONS INTERESTED IN THE MATTER OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.
Defendants.

(Statement of Decision)
Before
HUBBELL, Superior Court Judge.

The above-captioned consolidated cases challenging the validity of Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project and Ordinance No. 666 approving the Amendment, came on regularly for trial on January 27, 1992, in Department 21 of the Superior Court of the State of California for the County of Los Angeles, the Honorable Richard C.

Hubbell, presiding. The actions were filed pursuant to the Community Redevelopment Law ("CRL") (Cal. Health & Safety Code §§ 33000 et seq.)[1] and Code of Civil Procedure Section 860 et seq.

John J. Wagner of Wagner, Sisneros & Wagner appeared on behalf of Citrus Community College District ("Citrus College"), Plaintiff in LASC Case No. BC 007 801. De Witt W. Clinton, County Counsel of the County of Los Angeles, by and through Manuel A. Valenzuela, Deputy County Counsel appeared on behalf of the County of Los Angeles, Los Angeles County Flood Control District, Los Angeles County Public Library and Consolidated Fire Protection District of Los Angeles County (collectively, the "County"), Plaintiffs in LASC Case No. BC 008 824. Jonathan Lehrer-Graiwer and John E. Rittmayer appeared on behalf of Alice and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159. Jeffrey M. Oderman and Dan Slater of Rutan & Tucker appeared on behalf of Defendants.

The court having taken the above matter under submission on January 27, 1992 after a trial, and having read and considered all of the exhibits and considered the summation of counsel and the evidence produced by both sides on trial of the issues, now renders this statement of decision in favor of Plaintiffs.

I. STANDARD OF REVIEW

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[1] Unless otherwise expressly indicated, all statutory references shall be to the California Health & Safety Code.

The standard of review applied by the Court in the review of the findings made by Defendants City of Duarte ("City") and Redevelopment Agency of the City of Duarte ("Agency") in adopting Amendment No. 1 to the Redevelopment Plan for the Rancho Duarte Phase III Redevelopment Project ("Amendment") was the substantial evidence test. (In Re Redevelopment Plan for Bunker Hill (1964) 61 Cal.2d 21; Fosselman's, Inc. v. City of Alhambra (1986) 178 Cal.App.3d 806; County of Santa Cruz v. City of Watsonville (1985) 177 Cal.App.3d 831.)

II. EXHAUSTION ISSUE

A. The Court finds that the Los Angels County Flood Control District ("Flood") and Los Angeles County Public Library ("Library"), Plaintiffs in LASC Case No. BC 008 824, exhausted their administrative remedies afforded them under the CRL. (Redevelopment Agency v. Superior Court (Birbeck) (1991) 228 Cal.Ap.3d 1487.) This finding is based on the following facts 1) these two entities participated throughout the redevelopment process; 2) they provided information to Defendants (which information was used by Defendants in analyzing various reports); 3) the Board of Supervisors of the County of Los Angeles (their governing body) authorized and directed the County Counsel (their legal representative; See, Cal. Gov. Code § 27640 et seq., Los Angeles County Charter Art. IV, § 14) to oppose the Amendment at the public hearing held by Defendants; and, 4) the County Counsel filed written opposition on behalf of all the County taxing entities, including Library and Flood.

B. The Court also finds that Alice Allen and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159, exhausted required administrative remedies afforded them under the CRL. Plaintiffs verified Complaint Alleges that they delivered to the City Clerk on or about May 29, 1990, objections to the Amendment. Complaint in BC 009 159, paragraph 12. The allegation is verified by the administrative record which contains a letter of objection dated May 28, 1990 and received by the City of May 29, 1990 written by Plaintiffs counsel. [A.R. 365-367] That letter states on its face that it was submitted on behalf of the attorney's two clients, who are residents of the City. Defendants introduced no evidence the support their contention that the letter of objections submitted by Plaintiffs' attorney was not submitted on their behalf.

III. FINDINGS OF BLIGHT

A. Defendant City was required to make blight findings under Sections 33367(d)(1) and 33367(d)(11) and include said findings in Ordinance No. 666 which approved the Amendment. (Ca. Const. Art. XVI, § 16; §§ 33354.5, 33352, 33367(d), 33457.1.) The existence of blight is a necessary pre-requisite to a redevelopment agency's right to obtain taxes under Section 33670. (Calif. Const. Art. XVI, § 16; Regus v City of Baldwin Park (1977) 70 Cal.App.3d 968, 982.) Consequently, Plaintiffs' causes of action challenging the validity of Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project ("Amendment No. 1") and ordinance No. 666 on the grounds that the City failed to make findings of blight and other related findings, were timely since they were filed within 60 days of the adoption of Ordinance No. 666. Section 33500.

B. Defendant City failed to make blight findings. Defendants' admitted that no blight findings were made.

IV. FINDINGS ON THE INCLUSION OF NON-BLIGHTED AND NON-CONTIGUOUS AREAS

A. Defendant City was required to make findings under Sections 33457.1, 33367(d)(9) and 33367(d)(10), and include those findings in Ordinance No. 666.

B. Defendant City failed to make those findings.

V. FINDINGS ON PROMOTING THE GENERAL WELFARE AND ON EFFECTUATING PURPOSES OF THE CRL

A. Defendant City was required to make findings under Sections 33457.1, 33367(d)(2) and 33367(d)(5), and include those findings in Ordinance No. 666.

B. The record before the Court does not contain substantial evidence to support those findings. Additionally, the findings contained in this Statement of Decision support the conclusion that Ordinance No. 666 would not promote the general welfare and that it would not effectuate the purposes of the CRL.

C. Defendant Agency has failed to file with the State Controller for fiscal years 1987-1988, 1988-1989 and 1989-1990, reports which contain information required in Sections 33080.1(c) and 33080.4. This finding is supported by the Declaration of William J. Murphy and by the Reports of the Department of Housing and Community Development entitled, Redevelopment Agencies in California: The Effect of Their Activities on Housing, Fiscal Years 1989-1990 and

1987-1988. Defendants did not introduce evidence that the Agency had in fact submitted the required information to the State Controller.

Additionally, the Agency has failed to set-aside at least 20% of the taxes allocated to it under Section 33670 into a Low and Moderate Income Housing Fund as required by Sections 333334.2 and 33334.6 of the CRL for at least fiscal years 1989-90 and 1990-91. The Agency's Annual Report for Fiscal year 1989-90 claims that the Agency made findings under Sections 33334.2(a)(1), 33334.2(a)(3) and 33334.6(d) and (e) for each of the City's seven redevelopment project areas. However, findings under Section 33334.6(d) and (e) were not available and therefore not vaid as to any of the City's redevelopment plans, except the David Addition Plan, because all of the other plans were adopted after 1976. Furthermore, the Agency adopted Resolution No. RA-264 on November 14, 1989 and Resolution No. RA-274 on November 13, 1990. Those resolutions made findings under Sections 33334.2(a)(1) and (a)(3) for the purpose of not setting aside any taxes allocated to the Agency into a Low and Moderate Income Housing Fund. All of those findings were invalid because the City's Housing Element, adopted September 26, 1989, which was in effect at those times, was invalid, as specified below, rendering the findings invalid. Additionally, the findings under Section 33334.2(a)(1) were inconsistent with that Housing Element which identified significant housing needs in the City for very low, low and moderate income households. Those violations of the CRL substantiate that the Agency has not been effectuating the purposes and policy of the CRL. Given the Agency's current violation of the CRL as to all seven of its redevelopment plant adopted prior to Amendment No. 1, as concluded in this Section, the

finding by the City that the redevelopment plan would effectuate the purposes and policy of the CRL is not supported by substantial evidence.

VI. FINANCIAL BURDEN OR DETRIMENT

A. Library is not estopped from challenging the Amendment on the ground that it will suffer financial detriment. The January 22, 1990 letter relied upon Defendants, preceded Library's participation in the fiscal review process; a process which afforded all taxing entities an opportunity to fully and completely review the fiscal impact of the Amendment. (§§ 33352, 33353.3.) The fiscal review process authorized under Section 33353, involved review of information submitted by Defendants, a hearing on April 12, 1990 (§33353), and submission of a report to Defendant on or about May 10, 1990. (§33353.5.)

B. The record lacks substantial evidence to support the finding made by Defendant City pursuant to Section 33367(d) (12) that "[t]he effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area."

1. The Court finds that Defendants' actions thwarted effective review by the Fiscal Review Committee ("FRC") and that evidence produced by Plaintiffs throughout the process substantiates the claim that the Amendment will cause significant financial burden or detriment.

2. The record reveals that the FRC found that the assessed valuation of the project area since 1986-87 (approximately two (2) fiscal years before the ordinance

approving the original plan became effective) had increased by approximately 20 percent. The FRC conclusion that the taxing entities could reasonably expect to receive this or a substantial portion of this historical increase in the absence of redevelopment substantiates the claim that the Amendment would cause significant financial burden or detriment under Section 33012(b).

3. The FRC Report authorized by Section 33353.5(b) complies with the statutory requirements of the CRL and contains substantial evidence in and of itself to support a claim of significant financial detriment.

VII. DEFENDANTS FAILED TO COMPLY WITH PROCEDURAL REQUIREMENTS

The written response and findings prepared by Defendant Agency to the County's written objections filed at the joint public hearing of May 29, 1990 ("Objections") did not meet the requirements set forth in Section 33363. The Court finds that the response, in part, failed to provide good faith, reasoned analysis.

VIII. PURPOSES OF THE COMMUNITY REDEVELOPMENT LAW

Defendants City and Agency violated the purposes of the Community Redevelopment Law (§§33000 et seq.) in adopting the Amendment. The evidence produced at trial reveals that the purpose of the Amendment is to capture tax increment away from the Citrus College, the County and other taxing entities in the absence of blight and without substantial

justification. (Regus v. City of Baldwin Park (1977) 70 Cal.App.3d 968.)

IX. NEED FOR PUBLIC PARTICIPATION

A. Defendant City was required to make a finding under Section 33457.1 and 33367(d)(11), and to include that finding in Ordinance No. 666.

B. Defendant City failed to make that finding.

X. HOUSING ELEMENT

A. Defendant City was required to make a finding under Sections 33457.1 and 33367(d)(4), and to include that finding in Ordinance NO.666.

B. The General Plan of the City in effect at the time of the adoption of Ordinance No. 666 is the one against which the Amendment is to be adjudged for consistency. A housing element is a mandatory element of a general plan. (Cal. Gov. Code §65302(c).) The Housing element of the City in effect at the time of the adoption of the Amendment is the one adopted on September 26, 1989.

C. Sections 33331 and 33367(d)(4) required both that Ordinance No. 666 must have been consistent with the City's general plan in effect at the time of its adoption on June 26, 1990 and that such general plan must have been in compliance with state law. Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 537, 541, 544; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 741-742; Neighborhood Action Group v. County of Calaveras

(1984) 156 Cal.App.3d 1176, 1184, 1187-1188; Camp v. Board of Supervisors (1981) 123 Cal.App.3d 334, 348-353, 355.

D. To the extent that a nexus requirement exists as to the requirement in Section 33367(D)(4), the City's Housing Element has a bearing on the Amendment because the Amendment and the Original Plan projected and implemented the destruction of 47 residential units, many of which were occupied and affordable to low and moderate income households. In contrast, the Housing Element is required, among other things, to assess the City's housing needs and to adopt quantified objectives and a five-year housing program to meet those housing needs, particularly the needs for housing affordable to low and moderate income households. The City's Housing Element did not substantially comply with the requirements of the Housing Element Law (Cal. Gov. Code §§ 65580 et. seq.) for the following reasons:

1. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(a)(3) for the following reasons, inter alia. The "Inventory of land suitable for residential development" consists merely of the City's existing zoning categories by gross acreage and maximum permissible density; it does not specify the vacant sites in the City which are suitable for such use and it does not consider areas not currently zoned for residential use which are suitable for such use, as required in Government Code Section 65583(a)(3). Additionally, the date on the gross acreage for higher density residential areas in the City's Land Use Element, rendering those two elements inconsistent and also in violation of Government Code Section 65300.5. (Sierra Club v. Board of Supervisors (1981) 126 Cal.App.3d 698.)

2. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(a)(4) for the following reasons, inter alia: (1) it fails to identify the City's discriminatory treatment against new low and moderate income housing which subjects it to a design review process apparently not applicable to other housing; (iii) it fails to analyze the densities required for the development of housing affordable to very low, low and moderate income households and it fails to determine whether the City has enough land zoned at such densities to meet its existing and future housing needs for those households; and (iv) it identifies, but fails to analyze, that implementation of its land use policy may result in the removal of housing;

3. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(a)(6) by failing to analyze the City's needs for emergency shelters;

4. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(b) in that it fails to establish quantified objectives equal either to the City's total housing needs by income category or to the maximum number of low and moderate income housing units that can be constructed, rehabilitated or conserved over a five-year-time-frame, as required in Government Code Section 65583(b). The Housing Element fails to provide any evidence to establish that the quantified objectives are the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame.

5. The Housing Element does not substantially comply with the provisions of Government Code Section

65583(c) (first paragraph) in that it fails to utilize in its housing programs land use and development controls or to provide available regulatory concessions and incentives for the development of very low and low income housing;

6. The housing element does not substantially comply with the provisions of Government Code Section 65583(c)(1) in that it fails to identify adequate sites which will be made available through appropriate zoning and development standards to meet the City's housing goals and needs for low and moderate income housing. The failure of the Housing Element to have an adequate inventory of land suitable for residential development makes compliance with this requirement impossible;

7. The Housing Element does not substantially comply with the provisions of Government Code Sections 65583(c)(2) in that it fails to include program actions which demonstrate that the City will use its local power to assist in the development of adequate housing to meet the City's needs for very low, low and moderate income households.

8. The Housing Element does not substantially comply with the provisions of Government Code Section 65583(c)(3) in that it fails to address and remove governmental constraints to the maintenance, improvement and development of housing, particularly low and moderate income housing. The failure of the Housing Element to adequately analyze the City's governmental constraints makes compliance with this provisions impossible.

9. The Housing Element does not substantially comply with the provisions of Government Code Section

65583(c)(4) in that if fails to contain any program to conserve existing housing affordable to lower income households. (Buena Vista Gardens Apartment Assn. v. City of San Diego Planning Department (1985) 175 Cal.App.3d 289, 302-303.)

10. The Housing Element does not substantially comply with the provisions of Government Code Section 65588(a) in that it fails to contain an evaluation of the three factors specified in
Government Code Section 65588(a)(1) to (3). As noted by California Department of Housing and Community Development the only thing which could qualify as such an evaluation is the mere listing of gross annual housing production of housing. While this information might be considered to partially, though incompletely, satisfy the requirement for an evaluation of "progress in implementation" [Cal. Gov. Code Sec. 65588(a)(3)], the Housing Element is totally devoid of any evaluation of the "effectiveness of the element" or of the appropriateness of goals, objectives and policies." (Cal. Gov. Code Sec. 65588(a)(1) and (a)(2).

11. The City also failed to submit a draft of the Housing Element to the California Department of Housing and Community Development ("HCD") prior to its adoption in violation of Government Code Section 65585. The violation deprived HCD of its statutorily sanctioned input before adoption of the Housing Element and, in itself, rendered the Housing Element facially invalid.

This finding is based on the letter by HCD dated June 27, 1990 reviewing Duarte's adopted Housing Element." [A.R. 1124] That evidence is not rebutted by the declaration of Marc Blodgett submitted by

Defendants. Mr. Blodgett says that he "sent" the draft amended Housing Element to HCD but does not explain what he meant by "sent." This evidence does not invoke the presumption established by Evidence Code section 641. Furthermore, Mr. Blodgett does not state anywhere in his declaration that he was ever informed by any HCD staff that HCD had received the draft amended Housing Element. Consequently, the Court cannot conclude that Defendants complied with the requirement of Government Code section 65585 to submit the City's draft amended Housing Element to HCD at least 45 days prior to its adoption.

XI. CONCLUSION

Based on the above, the Court hereby grants judgment in favor of Plaintiffs declaring that Ordinance No. 666 and Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project are void and of no effect. Furthermore, this Court grants judgment declaring that Defendants Community Redevelopment Agency of the City of Duarte and City of Duarte are not entitled to implement the Amendment or demand or receive tax increases in the Amendment area and that said Defendants are not entitled to expend any such revenues for carrying out the Amendment.

DATED: April 27, 1992

s/
RICHARD C. HUBBELL
Judge of the Superior Court

APPENDIX E

NO. BC 007 801
(Consolidated with BC 008 824
and BC 009 159)

In the Superior Court of the State of California
for the County of Los Angeles

CITRUS COMMUNITY COLLEGE DISTRICT,
Plaintiff,

VERSUS

ALL PERSONS INTERESTED IN THE MATTER OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.
Defendants.

(Judgment April 27, 1992)
Before
HUBBELL, Superior Court Judge.

The above-captioned consolidated cases challenging the validity of Amendment No. 1 to the Rancho Duarte Phase III Redevelopment Project and Ordinance No. 666 approving the Amendment, came on regularly for trial on January 27, 1992, in Department 21 on the Superior Court of the State of California for the County of Los Angeles, the Honorable Richard C. Hubbell, presiding. The actions were filed pursuant to the Community Redevelopment Law ("CRL") (*Cal. Health & Safety Code §§ 33000 et seq.*) and Code of Civil Procedure Section 860 *et seq.*

John J. Wagner, Sisneros & Wagner appeared on behalf of Citrus Community College District ("Citrus College"), Plaintiff in LASC Case No. BC 007 801. De Witt W Clinton, County Counsel of the County of Los Angeles, by and thorugh Manuel A. Valenzuela, Deputy County Counsel appeared on behalf of the County of Los Angeles, Los Angeles Flood Control District, Los Angeles County Public Library and Consolidated Fire Protection District of Los Angeles County (collectively, the "County"), Plaintiffs in LASC Case No. BC 008 824. Jonathan Lehrer-Graiwer and John E. Rittmayer appeared on behalf of Alice Allen and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159. Jeffrey M. Oderman and Dan Slater of Rutan & Tucker appeared on behalf of Defendants.

The Court having taken the above matter under submission on January 27, 1992 after a trial, and having read and considered all of the exhibits and considered the summation of counsel and the evidence produced by both sides on trial of the issues, and having issued its ruling on the matter:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Amendment No. 1 to the Redevelopment Plan for the Rancho Duarte Phase III Redevelopment Project ("Amendment") in the City of Duarte and Ordinance No. 666 approving the Amendment are void and of no effect.

2. Defendants City of Duarte ("City") and Redevelopment Agency of the City of Duarte ("Agency") are not entitled to implement the Amendment or demand or receive tax increment revenues attributable to the assessed valuation increases in the Amendment area and that said Defendants are not entitle to expend any such revenues for carrying out the Amendment.

3. Defendants City and Agency are hereby permanently enjoined from taking any action to implement or carry out the Amendment, and from receiving any tax increment revenues from the Rancho Duarte Phase III Redevelopment Project area attributable to the Amendment.

4. Upon proper motion, Citrus Community College District, Plaintiff in LASC Case No. BC 007 801, shall be entitled to recover from Defendants City and Agency, and each of them, its costs of suit as provided in Code of Civil Procedure 1033.5, as determined by this Court.

5. Upon proper motion, County of Los Angeles, Los Angeles Flood Control District, Los Angeles County Public Library and Consolidated Fire

Protection District of Los Angeles County, Plaintiffs in LASC Case No. BC 008 824, shall be entitled to recover from Defendants City and Agency, and each of them, their costs of suit as provided in Code of Civil Procedure 1033.5, as determined by this Court.

6. Upon proper motion, Alice Allen and Laura Feinner, Plaintiffs in LASC Case No. BC 009 159, shall be entitled to recover from Defendants City and Agency, and each of them, their costs of suit as provided in Code of Civil Procedure 1033.5, as determined by this Court.

DATED: April 27, 1992

RICHARD C. HUBBELL
Judge of the Superior Court

Supreme Court, U.S.
FILED
NOV 14 1994
OFFICE OF THE CLERK

No. 94-674

In The

Supreme Court of the United States

October Term, 1994

ALICE ALLEN and LAURA FEINNER,

Plaintiffs and *Petitioners,*

vs.

CITY OF DUARTE and DUARTE REDEVELOPMENT AGENCY,

Defendants and *Respondents.*

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second Appellate District, Division Four

RESPONDENTS' BRIEF IN OPPOSITION

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37 pp

QUESTIONS PRESENTED

1. Does this Court have jurisdiction under 28 U.S.C. § 1257 to grant certiorari to consider Petitioners' due process claim notwithstanding that claim was not presented to nor passed upon by the state courts below?

2. Does this Court have jurisdiction under the case or controversy requirement in Article III of the United States Constitution and the Court's prudential standing doctrine to entertain Petitioners' due process and equal protection claims in light of Petitioners' failure to allege or prove that they have any personal stake in the outcome of the case?

3. Do the due process and equal protection clauses of the Fourteenth Amendment require the California courts to grant standing allowing Petitioners to challenge an action of a municipality in which action the Petitioners have no personal stake or interest?

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Respondents City of Duarte and Redevelopment Agency of the City of Duarte (collectively, "Duarte") respectfully request that this Court deny Petitioners' Petition for a Writ of Certiorari (the "Petition") to review the judgment of the California Court of Appeal, Second Appellate District, Division Four, filed April 14, 1994.

OPINIONS BELOW

In addition to the lower court opinions set forth as Appendices A-E to the Petition, Duarte is providing to this Court as Appendix A to this Respondents' Brief the Court of Appeal's April 14, 1994, Order Re Partial Dismissal of Appeal and Directing Superior Court to Enter New Judgment in Favor of City of Duarte and Redevelopment Agency of the City of Duarte.

JURISDICTION

Petitioners have invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

Duarte respectfully submits that this Court does not have jurisdiction under 28 U.S.C. § 1257 to consider Petitioners' due process claim. That statute requires that in the state courts Petitioners have "specially set up or claimed under the Constitution . . . of . . . the United States" the right which they now seek to have this Court enforce. *Webb v. Webb*, 451 U.S. 493, 495; see also, *Illinois v. Gates*, 462 U.S. 213, 221-223 (1983).

The Petition correctly notes, in compliance with this Court's Rule 14.1(h), that Petitioners raised their equal protection argument before both the California Court of Appeal (in a Petition for Rehearing) and the California Supreme Court (in a Petition for Review). Petitioners do not contend, however, that they have previously raised their due process claim. They did not. The claim is being asserted for the first time in the Petition filed with this Court.[1]

Neither the California Court of Appeal nor the California Supreme Court passed upon Petitioners' equal protection or due process claims.

Duarte also respectfully submits that Petitioners lack standing to sue (as the Court of Appeal below correctly found) and therefore that this Court lacks jurisdiction under Article III of the United States Constitution and the Court's well-articulated standing doctrine.

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[1] The due process claim that Petitioners now assert is that the Court of Appeal's rejection of Petitioners' standing to sue denied them their constitutional right of access to the courts. In their Petition for Review to the California Supreme Court (at pp. 21-23), Petitioners did raise a *different* due process claim – that they were denied a meaningful opportunity to brief and argue the standing issue upon which the Court of Appeal decision was based. Petitioners did not raise that other due process claim in their Petition before this Court; accordingly, that issue has been abandoned.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, Section 2 of the United States Constitution provides in part:

> The judicial Power shall extend to all Cases . . . arising under this Constitution . . . ; – to Controversies. . . . "

The Fourteenth Amendment to the United States Constitution provides in part:

> . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a) provides in part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specifically set up or claimed under the Constitution . . . of . . . the United States.

Duarte also refers in this Respondents' Brief to several California statutory provisions: California Code of Civil Procedure § 526a; California Government Code § 65589.3; former California Health and Safety Code §§ 33012 and 33367(d)(12), which were repealed by Stats. 1993, c. 942; and California Health and Safety Code §§ 33334.2 and 33670. The pertinent text of these statutory provisions is set forth in Appendix B hereto.

STATEMENT OF THE CASE

A. The Redevelopment Plan Amendment.

This case involves Petitioners' challenge to the validity of a minor amendment to a redevelopment plan that was adopted and approved by Duarte in June of 1990. The *only* substantive change that Duarte made to the original redevelopment plan at that time was the addition of the optional provisions in the California Community Redevelopment Law (California Health and Safety Code § 33000 *et seq.*) authorizing Duarte to implement the plan with the help of property tax increment financing.[2] Based on its experience in attempting to implement its original redevelopment plan *without* tax increment financing, Duarte determined that the collection of tax increment revenues was needed "to fully implement the provisions of the Redevelopment Plan" since the "costs of property

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[2] As stated by the California Supreme Court, property tax increment financing works as follows (when utilized):

> In essence [California Health and Safety Code Section 33670] provides that if, after a redevelopment project has been approved, the *assessed valuation of taxable property* in the project increases, the taxes levied on such property in the project area are divided between the taxing agency and the redevelopment agency. The taxing agency receives the same amount of money it would have realized under the assessed valuation existing at the time the project was approved, while the additional money resulting from the rise in assessed valuation is placed in a special fund for repayment of indebtedness incurred in financing the project.

Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 259; emphasis in original.

acquisition in the . . . Project Area have exceeded [earlier] cost estimates." (See, generally, Court of Appeal opinion, Appendix A to Petition, pp. 3-A to 4-A.)

B. The Three Lawsuits Challenging The Redevelopment Plan Amendment.

In July and August of 1990, three separate lawsuits challenging the validity of Duarte's 1990 redevelopment plan amendment were filed in Los Angeles County Superior Court: one suit was filed by the County of Los Angeles (the "County") and its affiliated taxing entities (the Los Angeles County Flood Control District, the Los Angeles County Public Library, and the Consolidated Fire Protection District of Los Angeles County); the second lawsuit was filed by the Citrus Community College District ("Citrus"); and, finally, a third action was filed by the two individual Petitioners still before this Court.

C. Settlement of the Other Two Lawsuits.

Duarte ultimately settled the lawsuits filed by the County and Citrus. The primary thrust of those lawsuits was to challenge Duarte's finding at the time the redevelopment plan amendment was adopted that the tax increment financing provisions being added to the redevelopment plan would not cause a "significant financial burden or detriment" on the affected taxing entities.[3]

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[3] See (former) California Health and Safety Code Sections 33012 and 33367(d)(12). It is noteworthy that the entire concept of a redevelopment project's imposition of "financial burden or

While not acknowledging that any financial "mitigation" was legally required,[4] shortly prior to the oral argument at the Court of Appeal level Duarte agreed to pay to the County and its affiliated taxing entities eighty percent

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detriment" on taxing agencies was recently repealed by the California Legislature and no longer exists effective January 1, 1994. (See *Stats.* 1993, c. 942, §§ 2, 15-20, and 22.)

[4] As noted in *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1044, tax increment financing is essentially self-supporting and does not result in a "loss" of funds to other taxing entities:

> The assertion that [a] redevelopment project will 'divert' revenue from local taxing entities is questionable. . . . [T]he redevelopment project *pays for itself* by taking advantage of increased property tax revenues generated by the project area's renovation. (*Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d, 24, 27; [other citations omitted].) *Consequently, absent a redevelopment project, it is doubtful local taxing agencies would receive increased revenues from property within the project area.* (Emphasis added.)

Furthermore, even assuming that Duarte's collection of tax increment revenues resulted in a dollar-for-dollar "diversion" of property tax revenues from the County, the undisputed evidence in the administrative record was that the County's "share" of tax increment revenues from the area in question amounted to only about .001% of the County's annual budget. Thus, the "loss" of these funds to Duarte could hardly be seen as causing a "significant financial burden or detriment" under the prior law. With regard to Citrus, the "impact" was even more remote. (See Administrative Record, hereinafter "A.R.," filed with Court of Appeal, at pp. 432, 565-566, and 819-820.) Finally, since the State of California was legally obligated to reimburse Citrus dollar-for-dollar for any local property tax revenue "lost" to redevelopment, Citrus was totally unaffected by the addition of tax increment financing provisions to Duarte's redevelopment plan.

(80%) of their "share" of the tax increment revenues. Duarte further agreed to "pass through" to Citrus forty-eight percent (48%) of its "share" of the tax increment revenues from the project. (See Court of Appeal opinion, Appendix A to Petition, at 5-A n. 2 and 22-A.) Based upon the resolution of their financial differences, Duarte, the County, and Citrus then jointly filed with the Court of Appeal a stipulation requesting that the County's and Citrus's appeals be dismissed with prejudice, the judgment entered at the trial court level against Duarte be reversed, and the matter be remanded to the Superior Court for entry of a new judgment in favor of Duarte. The Court of Appeal signed its order implementing this settlement and stipulation on April 14, 1994. (Appendix A hereto.)

D. Petitioners' Lack of Standing and the Court of Appeal Opinion.

Duarte was unable to settle the lawsuit filed by Petitioners. While significant portions of Petitioners' lawsuit were mooted prior to hearing and determination by the Court of Appeal,[5] Petitioners persisted in their legal challenge and the Court of Appeal eventually disposed of

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[5] Duarte's financial settlement with the County and Citrus also resolved Petitioners' Fifth Cause of Action which echoed the County's and Citrus's claims that Duarte's redevelopment plan amendment imposed a "significant financial burden or detriment" on the County and Citrus under (former) California law. (See n. 3 *ante*.) In addition, in March of 1993, Duarte updated the Housing Element of its General Plan that was attacked by Petitioners in their Seventh Cause of Action. On June 22, 1993, the new Housing Element was certified by the California Department of Housing and Community Development ("HCD") as being in full compliance with all requirements

their action by finding that Petitioners lacked the requisite personal stake in what was left of the case to give them standing to sue.

Petitioners have mischaracterized both the facts in the record regarding their lack of standing and the Court of Appeal's analysis and holding on this issue.

Contrary to Petitioners' assertion (Petition, p. 18), the Court of Appeal did not rule that Petitioners lacked standing simply because they "did not pay a tax on real property located in Duarte." Petitioners seek to characterize the Court of Appeal decision as one holding that only property owners and property taxpayers have standing to challenge certain governmental decisions in California. Nothing could be further from the truth.

The simple truth is that Petitioners had no personal stake in the outcome of the action. Petitioners did not allege that they were residents or taxpayers within the redevelopment project area in question. Nor did they allege or prove that the challenged redevelopment plan amendment would cause them any personal harm.[6] As

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of law. Under California Government Code § 65589.3, HCD certification established a rebuttable presumption of the validity of the Housing Element. In the 20 months that have passed since Duarte's new Housing Element was adopted, no one (including Petitioners) has challenged its validity.

[6] Petitioners did allege that they were lower income persons living in rental housing who were interested in general in the provision of affordable housing in the community. They completely failed to connect these stated concerns, however, to any adverse impact resulting from Duarte's approval of the challenged redevelopment plan amendment. Indeed, Duarte

the Court of Appeal noted, Petitioners' standing allegations to challenge Duarte's redevelopment plan amendment were based upon nothing more than "mere residency [in another area of the city] and the payment of an unspecified tax within the defendant city." (Appendix A to the Petition at 19-A.) The Court of Appeal carefully analyzed analogous California case law and came to the rather unremarkable conclusion that these allegations, without more, were insufficient to confer standing. (*Id.*)

The discussion in the Court of Appeal opinion about Petitioners not being property owners or property taxpayers was in response to Petitioners' own attempt to base their standing upon California Code of Civil Procedure § 526a, a taxpayer standing statute. As Petitioners correctly note (Petition at 21), this statute has been liberally interpreted by the California courts over the years to grant broad standing to municipal taxpayers to challenge illegal or wasteful expenditures of public funds in circumstances where traditional standing requirements might otherwise bar suit. At a minimum, however, in

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repeatedly pointed out to the California courts that addition of tax increment financing provisions to Duarte's previously adopted redevelopment plan could only advance Petitioners' professed goal of promoting more affordable housing. Pursuant to California Health and Safety Code § 33334.2(a), Duarte is obligated to expend fully twenty percent (20%) of any tax increment revenue received for the purpose of "increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost." If Petitioners were truly concerned about strengthening Duarte's affordable housing policies and programs, as they have claimed to be, they should be applauding Duarte's efforts, not opposing them!

order for one to take advantage of the broad taxpayer standing statute, one must be a taxpayer. Petitioners are not. Petitioners acknowledged that they were not property owners or taxpayers either within the redevelopment project area or anywhere within the City of Duarte, nor did they allege or prove what other kind of tax they might have paid to Duarte that would authorize a suit to be maintained based on California's liberal taxpayer standing statute.[7]

The Court of Appeal did not rule that similarly situated property owners and taxpayers necessarily have standing to sue in the circumstances in which Petitioners were denied standing. For example, in *Torres v. City of Yorba Linda*, 13 Cal.App.4th 1035 (1993), a recent case relied upon heavily by the Court of Appeal, it was held that a plaintiff's allegations of payment of taxes on real property located outside the city in question were insufficient tc confer standing to challenge a redevelopment plan. Conversely, the Court of Appeal did not hold that persons residing within a city cannot establish the requisite standing to sue unless they own property. If Petitioners had been able to demonstrate some personal stake

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[7] Even if the Court of Appeal had limited standing to sue to property taxpayers, which it did not, there would have been a rational basis for such a ruling. As stated above, the *only* change effected by the challenged redevelopment plan amendment was the reallocation of property tax revenues from the various taxing entities whose jurisdiction encompasses the redevelopment project area to the Duarte Redevelopment Agency. It seems reasonable that the property taxpayers paying these taxes would have a more significant interest in their expenditure than would persons who pay no taxes at all.

in the outcome of this action, such as any credible evidence that Duarte's adoption of the redevelopment plan amendment would deprive Petitioners of affordable housing opportunities, there is no question that the Court of Appeal would have upheld their standing to sue. Petitioners simply failed to carry this very minimal burden.

REASONS FOR DENYING THE WRIT

A. This Court Lacks Jurisdiction Under 28 U.S.C. § 1257 to Consider Petitioners' Due Process Claim Since That Claim was not Presented to Nor Passed Upon by the State Courts Below.

As stated above in the "Jurisdiction" section of this Brief, Petitioners never argued to the State courts that denying them standing constituted a denial of their Fourteenth Amendment due process right to access to the courts.

In their Petition (at p. 20), Petitioners also make a passing reference to their First Amendment right to petition the Government for a redress of grievances. This is not one of the questions formally presented in support of the Petition. In any event, Petitioners did not raise any First Amendment claims at the State court level either.

Duarte acknowledges that Petitioners might have a legitimate excuse for not raising the federal constitutional issues prior to the Court of Appeal's initial decision, since prior to that time Duarte's standing arguments were more narrowly framed. (See Court of Appeal opinion, Appendix A to Petition, at 10-A to 12-A.) Even being

most charitable to Petitioners, however, Petitioners did have an opportunity – which they failed to exercise – to raise their due process (and First Amendment) arguments in their Petition for Rehearing at the Court of Appeal level and in their Petition for Review with the California Supreme Court. They did not.

B. Petitioners Lack Standing to Raise Their Due Process and Equal Protection Claims in This Court.

Petitioners lack the requisite standing to raise their due process and equal protection claims in this Court.

> Generally stated, federal standing requires an allegation of a present or immediate injury in fact, where the party requesting standing has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues." [Citation omitted.] There must be some causal connection between the asserted injury and the challenged action, and the injury must be of the type "likely to be redressed by a favorable decision." [Citations omitted.]

Phillips Petroleum Company v. Shutts, 472 U.S. 797, 804 (1985). This Court has relied upon these well-settled rules to deny standing to a plaintiff who, like the Petitioners here, asserted a generalized interest in the provision of affordable housing without putting forth "specific, concrete facts demonstrating that the challenged [exclusionary zoning] practices harm him, and that he personally would benefit in a tangible way from the court's intervention." *Warth v. Seldin*, 422 U.S. 490, 508 (1975); compare

Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

To the extent Petitioners' standing claim is based upon their vague allegation that they paid some unspecified tax to Duarte, the claim is similarly insufficient to support federal court standing. See, e.g., *Warth v. Seldin, supra*, 422 U.S. at 509 (taxpayer challenging alleged exclusionary zoning practices of defendant municipality must demonstrate causal nexus between defendant's action and increase in plaintiff's taxes) and *Doremus v. Board of Education*, 342 U.S. 429, 433-434 (1952) (held: municipal taxpayer qua taxpayer had no standing to attack, on appeal from the state courts to the United States Supreme Court, the constitutionality of a state statute providing for the reading of Bible verses at the opening of each public school day, in the absence of proof of "a direct dollars-and-cents injury."). This is not "a good-faith pocketbook action." (*Id.*) Petitioners do not even attempt to demonstrate how any of their tax dollars would be illegally or wrongfully spent by Duarte or how their tax burden would be increased if the challenged redevelopment plan amendment is allowed to stand.

In summary, the Article III "case or controversy" requirement and the prudential standing principles enunciated by this Court in previous decisions bar Petitioners' attempt to invoke the Court's jurisdiction.

C. By Petitioners' Own Admission, The Court of Appeal Decision is an Isolated Case of No Precedential Effect. No Significant Public Purpose Would be Achieved by Devoting This Court's Precious Resources To a Reconsideration Of The Standing Issue.

Petitioners correctly note that the Court of Appeal decision was unpublished and therefore cannot be cited as precedent in any future case in California. (Petition, p. 22 n. 8.) Petitioners do not find fault with published California standing law that does have precedential value. (*Id.*) Thus, at most, Petitioners are asking this Court to devote its scant resources to righting an isolated wrong that will not recur. This hardly seems a compelling case for exercise of this Court's discretionary jurisdiction, particularly in a case in which Petitioners have no personal stake in the outcome anyway.

Petitioners do not contend that this Court's standing rules need any reconsideration or polishing. At most, this case would require the Court to apply settled law to a peculiar factual situation. Duarte respectfully submits that no valid public purpose is served by ordering the California courts to entertain litigation filed by individuals who lack standing under traditional standing rules.

D. On the Merits, Petitioners Have Failed to Raise a Substantial Federal Question.

In order for Petitioners to make out a cognizable constitutional claim for deprivation of their property rights under the Fourteenth Amendment, they must necessarily identify what property interest is involved. Here,

it appears that the only "property" right Petitioners assert is the right to file a lawsuit challenging a governmental action in which Petitioners have no personal interest. Not surprisingly, Petitioners fail to specify the source of this non-existent property interest.

If litigants had federally guaranteed constitutional rights to file lawsuits notwithstanding their lack of any personal stake in the outcome of those lawsuits, both the constitutional and prudential standing limitations applied by this Court and other federal and state courts would all be blown away. The courts in these circumstances would be opened wide to all manner of lawsuits based upon academic and hypothetical disputes.

Boddie v. Connecticut (1971) 401 U.S. 371, the lead case cited by Petitioners in support of their argument regarding a right to access to the courts, is easily distinguishable. In that case, the plaintiffs were indigent women desiring to obtain divorces but barred from doing so because of their inability to pay required court filing fees and costs. They indisputably had standing but were effectively denied access to the courts. This Court ruled that "given the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." (*Id.* at 374.) Here, by contrast, the whole point of the Court of Appeal decision is that Petitioners have no business seeking an adjudication of a dispute in which they have no interest. *Boddie* certainly does not support abrogating the standing doctrine and opening

the federal and state courts to a flood of lawsuits by disinterested litigants.

It is noteworthy that Petitioners also cite *United States v. Kras*, 409 U.S. 434 (1973), in support of their position. That case involved a challenge to a statutory requirement for the payment of filing fees as a condition precedent to obtaining a discharge in bankruptcy. The petitioner in that case alleged that he was unable to pay the filing fee and, relying upon *Boddie*, argued that the bankruptcy court's refusal to accept his petition denied his constitutional right of access to the courts. This Court rejected the claim. Notwithstanding the strong personal stake that the petitioner had in the case, this Court nevertheless distinguished *Boddie*, determined that there was no fundamental interest gained or lost depending on the availability of a discharge in bankruptcy, and upheld the filing fee requirement. If an indigent effectively can be denied access to the courts to file a bankruptcy petition without violating his constitutional rights, *ipso facto* an individual can be denied access to pursue a claim in which he or she has no personal interest. The right of access to the courts does not supersede the standing doctrine.

Petitioners' equal protection claim is just as far-fetched. For starters, Petitioners fail to clearly identify the class of persons allegedly being discriminated against here. They imply that the discriminated class is composed of persons who do not own property. If this is their point, they again overlook the fact that the Court of Appeal, relying upon *Torres*, *denied* standing to a property owner to challenge the very type of governmental decision challenged here. Some property owners have standing and some do not and some renters have standing and some

do not. The ultimate question for purposes of the standing doctrine, as the Court of Appeal correctly noted, is whether the plaintiff shows that "he or she or those he or she properly represents have either suffered or are threatened with an injury of sufficient magnitude that it is reasonably assured the lawsuit will provide an adequate presentation of all relevant facts and issues." (See Petition, Appendix 12-A, quoting from *Torres*.) Petitioners' problem is that they could not satisfy this standard.

Petitioners' reliance upon voting rights cases in support of their equal protection claim is totally misplaced. (See Petition at 24-27, citing *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970), *Cipriano v. City of Houma*, 395 U.S. 701 (1969), and *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969).

First of all, and to repeat a point made above, the Court of Appeal in this case did *not* hold that property owners have standing to sue and non-property owners do not. Thus, the legislative (or judicial) classification that Petitioners seek to set up as the premise for their equal protection discrimination argument simply does not exist. Moreover, one must again focus upon the nature of the right that is being asserted. No more fundamental right can be imagined in a free and democratic society than the right to vote in governmental elections involving agencies which have significant effects on all citizens.[8] By

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[8] Even in the voting rights field, it is noteworthy that this Court has rejected equal protection challenges to landowner – only voting schemes involving limited purpose governmental agencies of primary interest to landowners. See, e.g., *Ball v. James*, 451 U.S. 355 (1981) (agricultural improvement and power

contrast, there are no fundamental rights implicated, indeed no rights at all, when persons without a personal stake in the outcome of a lawsuit, whether property owners or tenants, are denied standing to sue.

Petitioners acknowledge that the "rational relationship" test applies in considering their equal protection challenge. (Petitioner at 24-25.) To the extent that California Code of Civil Procedure § 526a limits taxpayer standing to taxpayers, there is certainly a rational basis for the legislative classification. Presumably, taxpayers can be expected to have a greater concern with the illegal or improvident expenditure of public funds. Persons such as Petitioners who have failed to prove that they paid any particular tax (whether a property tax or otherwise) lack the same interest. *Doremus, supra*; see also, *Flast v. Cohen*, 392 U.S. 83, 102-103 (1968). No better example can be provided than the redevelopment plan amendment challenged in this case. The only substantive change effectuated by the plan amendment was to transfer from other taxing entities to the Duarte Redevelopment Agency the authority to receive property tax increment revenues from within the redevelopment project area boundaries. It would be reasonable and rational for the California Legislature to conclude in these circumstances that traditional standing rules should be relaxed and property taxpayers be given the right to sue. Having opened the courtroom door a bit wider than may have been required

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district); *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973) (watershed improvement district); and *Salyer Land Company v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) (water storage district).

to allow taxpayers to sue, however, does not require the Legislature to eliminate all standing barriers and to permit other persons with absolutely no interest in the redevelopment plan amendment to sue as well. Stated another way, Petitioners are not similarly situated to taxpayers whose tax funds are affected.

CONCLUSION

For the foregoing reasons, Respondents City of Duarte and Redevelopment Agency of the City of Duarte respectfully submit that the Petition for a Writ of Certiorari in this case should be denied.

Respectfully submitted,

JEFFREY M. ODERMAN
RUTAN & TUCKER

APPENDIX A

2nd Civil No. 067380

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITRUS COMMUNITY COLLEGE DISTRICT,

Plaintiff/Respondent,

v.

ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.,

Defendants/Appellants.

AND RELATED CONSOLIDATED CASES.

Appeal from the Superior Court of the
Los Angeles County
Honorable Richard C. Hubbell, Judge
Los Angeles Superior Court Case No. BC007801
Consolidated With Nos. BC008824 and BC009159

ORDER RE PARTIAL DISMISSAL OF APPEAL AND DIRECTING SUPERIOR COURT TO ENTER NEW JUDGMENT IN FAVOR OF CITY OF DUARTE AND REDEVELOPMENT AGENCY OF THE CITY OF DUARTE

(Filed Apr. 14, 1994)

The parties hereto, having filed a "Joint Application and Stipulation for Partial Dismissal of Appeal With Prejudice, Reversal of Judgment, and Remand to the Superior Court for the County of Los Angeles for Vacation of Judgment and Entry of a New and Different Judgment in Favor of Appellants," and Memorandum of Points and Authorities in Support Thereof;

IT IS ORDERED that:

1. The Judgment entered by the trial court in Los Angeles County Superior Court in Case Nos. BC008824 and BC007801 is hereby reversed and remanded to the trial court with directions to vacate and set aside the Judgment with respect to said cases and to enter the judgment set forth in Exhibit No. 1 hereto. The reversal is pursuant to settlement and does not constitute either approval or rejection of the trial court's prior judgment.

2. The remittitur shall issue forthwith.

3. Each party shall bear its own costs on appeal and attorney's fees.

This Order is entered pursuant to applicable law. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273; *Lara v. Cadag* (1993) 13 Cal.App.4th 1061.)

This Order does not affect or otherwise prejudice the rights of any party in any related appeal.

SO ORDERED.

Dated: APR 14, 1994.

/s/ Hastings	/s/ Woods	/s/ Klein
Justice	Justice	Justice

RUTAN & TUCKER
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Attorneys for Defendants CITY OF DUARTE and REDEVELOPMENT AGENCY OF THE CITY OF DUARTE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CITRUS COMMUNITY COLLEGE DISTRICT, Plaintiff, vs. ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al., Defendants.	CASE NO.: BC 007 801 Consolidated Actions: BC 007 801 BC 008 824 BC 009 159 (Trial Court Delay Reduction Program – Judge Hubbell – Dept. 21)
COUNTY OF LOS ANGELES; LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; LOS ANGELES COUNTY PUBLIC LIBRARY; and CONSOLIDATED FIRE PROTECTION DISTRICT OF LOS ANGELES COUNTY, Plaintiffs,	**JUDGMENT AFTER REMITTITUR** BC 007 801 BC 008 824

vs.

ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.,

Defendants.

ALICE ALLEN and LAURA FEINNER,

Plaintiffs,

vs.

ALL PERSONS INTERESTED IN THE VALIDITY OF AMENDMENT NO. 1 TO THE REDEVELOPMENT PLAN FOR THE RANCHO DUARTE PHASE III REDEVELOPMENT PROJECT IN THE CITY OF DUARTE, etc., et al.,

Defendants.

BC 009 159

The above captioned cases, consolidated under Case No. BC007801, came on regularly for trial on January 27, 1992, in Department 21 of the Superior Court of the State of California for the County of Los Angeles, the Honorable Richard C. Hubbell, presiding.

John J. Wagner appeared on behalf of Plaintiff Citrus Community College District ("Citrus") (Case No. BC007801).

De Witt W. Clinton, County Counsel of the County of Los Angeles, by and through Manuel A. Valenzuela, Deputy County Counsel, appeared on behalf of Plaintiffs County of Los Angeles, Los Angeles County Flood Control District, Los Angeles County Public Library, and Consolidated Fire Protection District of Los Angeles County (collectively "County Taxing Entities") (Case No. BC008824).

Jonathan Lehrer-Graiwer and Jonathan Rittmayer appeared on behalf of Plaintiffs Alice Allen and Laura Feinner ("Allen and Feinner") (Case No. BC009159).

Citrus, County Taxing Entities, and Allen and Feinner, are hereinafter referred to collectively as "Plaintiffs."

Jeffrey M. Oderman and Dan Slater appeared on behalf of Defendants City of Duarte and Redevelopment Agency of the City of Duarte (collectively, "Defendants").

On April 27, 1992, judgment in the consolidated actions was entered in favor of Plaintiffs and against Defendants (the "Original Judgment").

Defendants appealed the Original Judgment to the Court of Appeal of the State of California, Second Appellate District, Division Four (2nd Civil No. B067380).

Pursuant to a joint stipulation and request of plaintiffs Citrus and County Taxing Entities, and Defendants, the Court of Appeal entered its order reversing the Original Judgment in Cases Nos. BC007801 and BC008824, issued a remittitur, and directed this Court to vacate and set aside the Original Judgment and enter a new judgment in Cases No.s [sic] BC007801 and BC008824 in favor of Defendants in the form set forth herein.

NOW, THEREFORE, IT IS ORDERED, DECLARED, ADJUDGED, AND DECREED as follows:

1. The Judgment entered by this Court on April 27, 1992, in the consolidated cases denominated as Case No. BC 007801, and consisting of Case Nos. BC007801, BC008824, and BC009159, is hereby vacated and set aside with respect to Cases Nos. BC007801 and BC008824.

2. Judgment is hereby granted, with respect to Case Nos. BC007801 and BC008824, in favor of Defendants City of Duarte and Redevelopment Agency of the City of Duarte.

3. Amendment No. 1 to the Redevelopment Plan to the Rancho Duarte Phase III Redevelopment Project ("Amendment"), and Ordinance No. 666 approving and adopting the Amendment, are hereby declared to be valid, and Defendants City of Duarte and Redevelopment Agency of the City of Duarte are hereby entitled to implement said Amendment and obtain all the benefits accruing thereto, including but not limited to receipt of tax increment revenues pursuant to Health and Safety Code Section 33670(b).

4. Each party in Cases Nos. BC007801 and BC008824 shall bear its own costs of suit and attorney's fees.

Date: _____ _____

Judge

APPENDIX B

RELEVANT STATUTORY PROVISIONS

California Code of Civil Procedure Section 526a provides in part:

> **§ 526a. Action against officer of city or county; precedence of action to enjoin public improvement project**
>
> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . .

California Government Code Section 65589.3 provides:

> **§ 65589.3. Rebuttable presumption of validity of element or amendment in action to challenge housing element**
>
> In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department [of Housing and Community Development] has found that the element or amendment substantially complies with the requirements of this article.

Until Stats. 1993, c. 942 became effective on January 1, 1994, former California Health and Safety Code Section 33012 provided:

§ 33012. Financial burden or detriment.

(a) "Financial burden or detriment" means either of the following:

(1) A net increase in the quality or quantity of a service of the affected taxing entity caused by the redevelopment project.

(2) A loss of property tax revenues by the affected taxing entity produced by a change of ownership or new construction which would have been received, or was reasonably expected to have been received, by the taxing entity if the redevelopment project was not established.

(b) The division of taxes pursuant to Section 33670, by itself, shall not constitute a financial burden or detriment. . . .

Until Stats. 1993, c. 942 became effective on January 1, 1994, former California Health and Safety Code Section 33367(d)(12) provided:

§ 33367. Contents of ordinance adopting plan

The ordinance [adopting a redevelopment plan] shall contain all of the following:

. . .

(d) The findings and determinations of the legislative body that:

(12) The effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area. This finding shall only

be required when the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670.

California Health and Safety Code Section 33334.2 provides in part:

§ 33334.2. Housing for persons and families of low or moderate income; findings

(a) Not less than 20 percent of all taxes which are allocated to the [redevelopment] agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105. . . .

California Health and Safety Code Section 33670 provides in part:

§ 33670. Division of taxes levied; allocation

Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing

agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purposes of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after that effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

(b) Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing

agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid. . . .